IN-CONFIDENCE

Under the Inquiries Act 2013

In the matter of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions

Amended Brief of Evidence of Una Rustom Jagose for the Crown Law Office

Investigation into abuse in State psychiatric care

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I, Una Rustom Jagose, Solicitor-General, will say as follows:

1 INTRODUCTION

1.1 E nga kaiwhakawā, tēnā koutou. Ko Una Rustom Jagose tōku ingoa. Ko au te rōia matāmua o te karauna.

1.2 My full name is Una Rustom Jagose. I am the Solicitor-General of New Zealand.

1.3 I have previously given briefs of evidence to the Royal Commission dated 28 February and 13 March 2020 and appeared before the Royal Commission from 2 to 4 November 2020 as part of its redress hearing. I subsequently provided further information in a witness statement dated 1 February 2021. Much of that evidence is also relevant to the Royal Commission's investigation into the Lake Alice Child and Adolescent Unit (**Lake Alice**). While I try not to repeat myself, some evidence is given again to ensure this brief has a self-contained response to the questions asked.

1.4 The purpose of this brief of evidence is to respond to questions from the Royal Commission (contained in Schedule A of Notice to Produce No. 34 dated 17 December 2020; hereafter **NTP 34**) relating to the role of the Crown Law Office (**Crown Law**) in responding to legal claims, inquiries and investigations arising from Lake Alice.

1.5 As stated in my earlier evidence, I have worked at Crown Law since 2002 and have been heavily involved in providing legal advice and representation to agencies in abuse in care claims against the Crown during that time. As before, it is not because of that involvement that I am giving this evidence (although aspects of my evidence do reflect my personal involvement). Instead, I consider it is important that – as the Junior Law Officer of the Crown and in recognition of the importance of this Royal Commission – the Solicitor-General appears to explain the Crown's (including Crown Law's) role in these matters and put actions taken in their proper context. That is because the Law Officers of the Crown are responsible for the conduct of Crown litigation and for determining the Crown view of the law.

1.6 I do not seek to defend everything that has happened. Where, in the conduct of Crown litigation, Crown actors have failed to meet the high expectations the public has of us, that I have of us, and my colleagues have of themselves, I do not hesitate to say so. I am open to the Royal Commission's findings and recommendations and sincerely undertake to learn from this process.

1.7 Where the Royal Commission's questions relate to matters before my time at Crown Law or in which I was not personally involved, I inevitably rely heavily on the documentary record. In some cases, I have sought the assistance of former counsel so as to provide a fuller response.

1.8 The specific detail in the Appendices has been taken from the relevant files and compiled by counsel in the Crown Law Office. The Appendices support my evidence in this brief.

2 SCOPE OF EVIDENCE

2.1 In this evidence, I address:

(a) The division of the Solicitor-General's criminal and civil functions and, in particular, how Crown Law manages potential conflicts arising from supporting the Law Officers in these functions (NTP 34, Question 1).

(b) Crown Law's involvement in the 1977 Inquiry into Lake Alice conducted by Stipendiary Magistrate William Mitchell (NTP 34, Questions 2 & 3).

(c) The steps taken by Crown Law in responding to the civil claim lodged by Leonie McInroe in 1994 (NTP 34, Questions 4 & 5).

(d) The steps taken by Crown Law in responding to the claims commenced by Grant Cameron Associates (NTP 34, Questions 6 – 12).

(e) The engagement between Crown Law and the New Zealand Police regarding Lake Alice (NTP 34, Questions 13 – 17).

(f) Crown Law's role in the response of the New Zealand Government to the United Nations Committee Against Torture (**UNCAT**) regarding Lake Alice (NTP 34, Questions 18-19).

3 THE DIVISION OF THE SOLICITOR-GENERAL'S CRIMINAL AND CIVIL FUNCTIONS (NTP 34, QUESTION 1)

3.1 The Royal Commission has asked how Crown Law divides its responsibilities supporting the Solicitor-General in the conduct of prosecutions and the commencement or defence of civil claims involving the Crown (NTP 34, Question 1 a), and how it manages potential conflicts between these functions (NTP 34, Question 1 b).

3.2 The Royal Commission has also asked whether Crown Law has implemented a policy regarding the referral of criminal allegations raised in civil proceedings to the Police (NTP, Question 1 c).

3.3 At the outset, I recognise the importance of these questions.

3.4 New Zealand places very high constitutional value in prosecution processes that are open and fair to the defendant, witnesses and victims of crime, and reflect the proper interests of society. As stated in the *Solicitor-General's Prosecution Guidelines* (**Prosecution Guidelines**):[1]

> The universally central tenet of a prosecution system under the rule of law in a democratic society is the independence of the prosecutor from persons or agencies that are not properly part of the prosecution decision-making process.

3.5 It is essential that prosecutorial decisions are not affected by irrelevant considerations, including concerns about the Crown's potential civil liability for the conduct of its employees and agents. Based on the institutional arrangements outlined below, I am confident that prosecution decisions have not been influenced by such considerations.

3.6 There is, however, a need to manage the potential tension between the Solicitor-General's dual roles:

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1 See https://www.crownlaw.govt.nz/assets/Uploads/Prosecution-Guidelines/ProsecutionGuidelines2013.pdf at [4.1].

(a) in defending civil claims and the attendant need to rely on the full and frank disclosure of information by potential witnesses; and

(b) in being responsible for the Crown's prosecution processes and ensuring that the manner in which information is collected does not jeopardise possible future prosecutions.

3.7 The Solicitor-General's dual roles also raise some challenging issues regarding the referral of criminal allegations made in civil proceedings to the Police. I have already addressed this in evidence before the Royal Commission. These are matters that all Crown agencies grapple with when receiving claims that, if proven, would constitute criminal offending. Many of the allegations made in historic claims are of this nature.

3.8 To answer the Royal Commission's questions, I begin with a brief overview of the Solicitor-General's relevant functions and describe how Crown Law is structured. I then explain the Solicitor-General's supervisory role in the public prosecution process, which itself limits the potential for conflicts of interest within Crown Law, before turning to address particular challenges arising from the Solicitor-General's dual responsibilities and how they are met in practice.

The Solicitor-General's relevant functions

3.9 As I have previously stated, the Law Officers, the Attorney-General and the Solicitor-General, have constitutional responsibility for determining the Crown's view of what the law is, and ensuring that the Crown's litigation is properly conducted.

3.10 To ensure appropriate oversight, the *Cabinet Directions for the Conduct of Crown Legal Business 2016* (**Cabinet Directions**)[2] define "Core Crown legal matters" – including legal representation in any court or tribunal where the Crown is a party - and provide high level instructions on how those matters are to be conducted. Subject to limited exceptions, all litigation in the High Court or appellate courts is conducted by Crown Law or briefed to appropriately qualified external counsel.

3.11 The Solicitor General is responsible for maintaining general oversight of the conduct of public prosecutions: Criminal Procedure Act 2011 (**CPA**), s 185. That provision is a recent statutory recognition of the Law Officers' responsibility for "public prosecutions" (defined in s 5 CPA). It is important to recognise that this responsibility is carried out through supervision of the prosecutorial process, and in particular through superintending the arrangements pursuant to which Crown Solicitors hold warrants to conduct Crown prosecutions on behalf of the Solicitor-General (s 187 CPA).

Crown Law's organisational structure

3.12 Crown Law is divided into five groups dealing with, in broad terms, four legal practice areas and our corporate organisational functions. The legal groups are centred around three practice areas (Criminal, Constitutional and Te Tiriti o Waitangi, and Public Law) and a 2-year pilot of a separate System Leadership function. Each group is led by a Deputy Solicitor-General or Deputy Chief

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[2] See https://dpmc.govt.nz/publications/co-16-2-cabinet-directions-conduct-crown-legal-business-2016

Executive and those senior practitioners, along with the Solicitor-General, make up Crown Law's Leadership Team.

3.13 There has been a Deputy Solicitor-General with responsibility for the supervision of Crown Solicitors in relation to indictable prosecutions since at least 1995, and both a Deputy Solicitor-General (Criminal) and Deputy Solicitor-General (Public Law) since 1999. Criminal procedure in New Zealand was codified and simplified in 2011 by the CPA with some implications for the formal role of the Solicitor-General in public prosecutions.

Solicitor-General's oversight of public prosecutions

3.14 As mentioned already, the Solicitor-General's responsibility for public prosecutions is carried out through supervision of the prosecutorial process.

3.15 The Solicitor-General has a particular role in the more serious prosecutions which become "Crown prosecutions" under the Crown Prosecution Regulations 2013. These include all jury trial matters, all prosecutions in the High Court, prosecutions for all Category 4 offences[3] under the CPA, and prosecutions for other serious offences listed in the Schedule to the Regulations.[4]

3.16 The Solicitor-General is directly responsible for the conduct of all prosecutions once they become Crown prosecutions and at that point takes over responsibility from the agency which commenced them. Most such prosecutions are the result of Police investigations and are commenced by the Police. The Crown prosecution function is carried out on behalf of the Solicitor-General by Crown Solicitors, who are private lawyers appointed by warrants issued by the Governor-General. Crown Solicitors are independent from the Police and other prosecuting agencies. Further, s 193 of the CPA requires that Crown prosecutions be conducted independently of the prosecuting agency commencing them.[5]

3.17 Police prosecutors and prosecutors employed by other public prosecuting agencies have authority under the Cabinet Directions to conduct prosecutions for less serious offences.[6]

3.18 The Solicitor-General's general oversight of public prosecutions is undertaken through:

(a) The supervision and management of the Crown Solicitor network. Crown Law administers the funds for Crown Solicitors, runs the appointment process when warrants are vacated and conducts regular performance reviews, as well as carrying out miscellaneous administrative functions.

(b) Oversight of prosecuting agencies, all of whom report monthly statistics on their prosecutions. As mentioned above, the Office also conducts

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3 In summary, Category 4 offences are the most serious offences in New Zealand. They are listed in Schedule 1 of the CPA.

4 In general, this mirrors the position prior to the CPA coming into force on 1 July 2013, when the Crown was responsible for all "indictable" matters following committal for trial.

5 Again, the statutory arrangements under the CPA mirror the pre-CPA position.

6 Cabinet Directions at [22].

assessments of the way in which the prosecution function is being exercised within individual prosecuting agencies.

(c) The development of guidance to prosecutors, such as the Prosecution Guidelines and the *Solicitor-General's Guidelines for Prosecuting Sexual Violence*.[7] This work is done by legal counsel in the Criminal teams within Crown Law and, in the absence of a centralised decision-making agency for prosecutorial decisions, is essential to setting core and unifying standards for the conduct of public prosecutions.

(d) The Law Officers have a range of functions affecting individual prosecutions. For example, the Solicitor-General has the power to stay a prosecution[8] and certain offences may only be prosecuted with the consent of the Attorney-General.[9] Under the Cabinet Directions and the Prosecution Guidelines, public prosecutors are required to obtain consent from the Solicitor-General before filing an appeal.[10] Crown Law is also the central authority for the purposes of the Mutual Assistance in Criminal Matters Act 1992, which facilitates international assistance in criminal matters. There are various other functions which can only be exercised by, or with the consent of, a Law Officer of the Crown. In practice, these functions are generally exercised on behalf of the Law Officers by the Deputy Solicitor-General (Criminal) with the support of advice from the Criminal teams' counsel. There is a different point at which the Law Officers become aware of specific matters decided by the Deputy Solicitor-General. The Solicitor-General is a source of professional assistance and guidance, and may – on occasion - make a decision herself. The Attorney-General is in a different position; by long standing convention the Attorney-General is rarely briefed on specifics arising in the prosecutions area. That is to ensure there is no actual or perceived conflict between political interests and prosecution decisions. The Attorney-General would only become aware of these matters if briefed by the Solicitor-General or Deputy Solicitor-General. That is very rare, and reserved for significant or high profile matters that the Senior Law Officer should be aware of, with care taken to ensure no influence can be exerted (or perceived as being able to be exerted) on independent decisions. For this reason, any briefing would usually be high level, and generally after the relevant decision has been made.

(e) The Criminal teams also provide advice to prosecuting agencies in respect of legal issues touching upon the criminal law, such as the proper interpretation of particular statutory provisions.

3.19 The Criminal teams do not commonly give advice in respect of individual cases; such advice is more commonly provided by lawyers within the prosecuting agency or local Crown Solicitors. However, such advice is occasionally given and one such example arose in respect of Lake Alice. Deputy Solicitor-General (Criminal), Ms Nicola Crutchley, gave advice to the Police about the evidential

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7 See https://www.crownlaw.govt.nz/assets/Uploads/Solicitor-Generals-Guidelines-for-Prosecuting-Sexual-Violence.PDF

8 It is this power that enables the Solicitor-General to grant immunity from prosecution.

9 This is a statutory requirement. Examples of such offences include offences with an extraterritorial aspect, and new or novel offences.

10 This is a statutory requirement in respect of sentence appeals: s 246 of the CPA.

requirement to be met in relation to a consideration of a prosecution of Dr Leeks. That is detailed further later in my brief.

3.20 Crown Law sometimes provides peer review of advice provided by departmental prosecutors or Crown Solicitors in respect of issues arising in particular prosecutions, but this is not common, and is usually reserved for cases where the prosecuting agency seeks additional comfort about the advice they are receiving.

3.21 There may be cases where advice is sought from private barristers. This generally occurs where the prosecuting agency seeks external advice and the local Crown Solicitor has a conflict of interest. Generally, however, an alternative Crown Solicitor (for example in the neighbouring warrant) would be preferred. Crown Law would usually only become involved by way of peer review of the advice given, if sought in a high profile or complex case.

3.22 A central principle underlying all this, and which has been consistent in New Zealand over time, is that regardless of who provides the advice, the decision on whether to prosecute remains one for the prosecuting agency (usually the Police). The exception is that if a prosecution is commenced and it subsequently becomes a Crown prosecution, the relevant Crown Solicitor will make an independent decision as to whether to continue with the prosecution and, if so, on what charges. Crown Law might, again, be involved in those decisions if peer review were sought.

3.23 The Prosecution Guidelines are the foundation guidance for all public prosecutors when deciding whether to commence a prosecution or not, and, if a prosecution is commenced, how that prosecution should be conducted. Adherence to the Prosecution Guidelines is a condition of the warrant held by each Crown Solicitor. The test for prosecution is twofold: first, the prosecuting agency must be satisfied there is sufficient evidence to provide a reasonable prospect of a conviction ("the evidential test"). If, and only if, that test is satisfied, the prosecutor must then consider whether prosecution is required in the public interest ("the public interest test"). The Prosecution Guidelines set out a non-exhaustive range of factors to be considered when assessing whether the public interest test is met. A prosecution can only be commenced if both the evidential test and the public interest test are satisfied.

Checks and balances on decisions to prosecute

3.24 Where a prosecuting agency has made a decision to prosecute an offence, there are a number of checks on this decision:

(a) If the matter is a Crown prosecution, the Crown Solicitor who becomes responsible for the prosecution must review the matter and make an independent decision whether to continue with the prosecution (whether on the same or different charges) or bring it to an end. Charges may be added, amended or withdrawn without leave of the Court, save that a decision to withdraw all charges (bringing a prosecution entirely to an end) requires leave.

(b) A defendant may apply for charges to be dismissed or stayed by the Court for lack of evidence, undue delay or on the basis the prosecution is

an abuse of process. If successful, a defendant may seek costs against the Crown.

(c) The Attorney-General has the power to grant a stay of proceedings under s 176 of the CPA. A defendant (or indeed anyone) can ask the Attorney-General to stay a prosecution, for any reason.

(d) Any person can make a complaint to the Independent Police Complaints Authority about a prosecution commenced and conducted by the Police.

(e) In New Zealand, defendants have a right to appeal against sentence and/or conviction. On occasion, the appeal process also subjects the charge and the sufficiency of the evidence to close scrutiny.

3.25 Due to the principle of prosecutorial discretion and independence (s 193 CPA), there is generally less oversight or scope for intervention where a decision is made not to prosecute. But where a prosecuting agency decides not to bring a prosecution, there are a number of possible checks on that decision:

(a) The prosecuting agency, or prosecuting division within an agency, can be asked by other interested persons (e.g., an investigator in the agency, a case officer, an affected person or complainant) to review its decision internally.

(b) In Police matters, a complaint can be made to the IPCA.

(c) Complaints against Crown Solicitors may be made to the Solicitor-General or the Law Society.

(d) A private prosecution can be commenced (although this is very rare).

3.26 In limited circumstances, it may also be possible to challenge a decision not to prosecute by way of an application for judicial review in the High Court (although the potential for this kind of application is likely to be very limited given the broad discretion afforded to prosecutors).

Separation of functions

3.27 Given the Solicitor-General is not responsible for decisions to prosecute and takes a supervisory role in relation to criminal prosecutions generally, the "conflict" anticipated by question 1.b is not quite apt. There can be no conflict of interest in the true sense of having competing duties that are in conflict because the duties are always owed to the Crown. Really the question appears to be asking whether lawyers within Crown Law could improperly influence prosecutorial decisions (whether to stifle or encourage a prosecution) so as to secure an advantage in their conduct of civil litigation on behalf of the Crown.

3.28 It is difficult to imagine a realistic scenario in which the Solicitor-General's roles could be maliciously misused and not detected. That is for two reasons:

(a) The Solicitor-General's role is a supervisory one and decisions to prosecute are taken by others, as set out; and

(b) Lawyers within or briefed by Crown Law work with, and sometimes act on instructions from, agencies and/or Ministers of the Crown. While

substantive decisions about how to conduct litigation are not all made by Crown Counsel, I accept that our legal advice is influential. Those decisions that are made by Crown Counsel are made in collaboration with others. Disputes about how litigation should be conducted would tend to be elevated in the hierarchy of this Office or another agency (or both).

3.29 The integrity of statutory office holders, Crown lawyers, and their colleagues in agencies is the first defence against any such misconduct.

3.30 But, further, there are institutional arrangements at Crown Law and in the wider public service that limit the potential for a rogue lawyer or set of lawyers to conduct their duties in such a way. In particular:

(a) Decisions to prosecute (including decisions not to prosecute) are taken by independent decision makers, outside of Crown Law.

(b) The Solicitor-General's prosecution-related functions are generally exercised by the Deputy Solicitor-General (Criminal) pursuant to a delegation under s 9C of the Constitution Act 1986.

(c) If we were aware of a criminal appeal relating to an individual against whom allegations are made in a civil action involving the Government as a defendant or co-defendant, the conduct of the criminal appeal would be briefed to external counsel.

(d) Any plea arrangements in relation to murder charges must be approved by the Solicitor-General (or Deputy as noted above).

(e) If Crown counsel conducting civil litigation speak to a person against whom criminal allegations are made in the proceeding, they make it clear they are not that person's lawyer and that information gathered in the context of the briefing may need to be referred to other government agencies including the Police.

(f) If evidence of criminal offending is identified (a confession for example) in preparing for civil trials, counsel will give consideration to referring that information to the Police in accordance with the guidelines detailed below.

(g) Civil litigation is conducted with the departmental agency or agencies responsible – for example, in respect of Lake Alice, the Ministry of Health. Litigation planning (or strategy) is discussed with the agency and is set out in a Litigation Management Plan. Relevant Ministers may also be involved in setting litigation strategy (as, for example, in historic claims and Lake Alice claims in particular).

(h) Settlements of civil litigation are subject to Cabinet Direction: see Cabinet Office Circular CO (18) 2, "Proposals with Financial Implications and Financial Authorities".[11]

(i) The ethical standards applicable to all lawyers.

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11 https://dpmc.govt.nz/publications/co-18-2-proposals-financial-implications-and-financial-authorities

(j) The Public Service Code of Conduct.

3.31 However, as explained below, the Solicitor-General's roles do give rise to issues that need to be carefully managed – particularly regarding evidence gathering and the referral of criminal allegations to the Police. These issues have been particularly apparent in the context of historic claims where allegations that would constitute criminal offending are commonly made.

Issues arising from the Solicitor-General's roles

Responding to civil claims

3.32 When Crown Law receives a civil claim, or is notified about proposed proceedings, the first step is to take instructions from the agencies involved and determine the appropriate response to the claim.[12]

3.33 The first formal litigation step for the Crown in civil proceedings is often the filing of a statement of defence (although the Crown may instead seek to settle claims or to strike out claims that are untenable as a matter of law or seek further particulars of the claim). The statement of defence must either admit or deny the allegations of fact in the statement of claim.[13]

3.34 In accordance with the *Attorney-General's Values for Crown Civil Litigation*,[14] the Crown will not contest matters which it accepts as correct.[15] But an allegation that is not denied in a statement of defence is treated as being admitted.[16] As a consequence, if the Crown does not know the truth of an allegation or does not yet know how it will respond to the allegation, it will be denied (at least until such point as it can be established).

3.35 In order to respond to a claim effectively, it is therefore necessary for the Crown to assess the allegations made against any available evidence. While the documentary record may provide assistance, it will frequently be necessary to interview witnesses – including those against whom allegations have been made.

3.36 In the context of current practice, the process for determining the appropriate response to historic claims is different to other claims that are received. The volume of claims, the well-developed ADR processes in agencies and the need for extensive research by agencies themselves into the facts alleged means that many initial statements of defence are not the final position that will be taken at trial, if the matter ends up going to trial. That hasn't always been the way, as I addressed in my earlier brief of evidence.

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12 Current practice upon receipt of proceedings is for the Crown Counsel assigned to the case to work with the instructing agency at an early stage to prepare a Litigation Management Plan (**LMP**) – a 'living document' setting a framework for the effective and efficient running of the case. The early preparation of a LMP is intended to encourage counsel to be proactive rather than reactive (since Crown Law generally represents a defendant and responds to the initiatives of the plaintiff) and address the litigation in a comprehensive and strategic way from the outset.

13 High Court Rules 2016, r 5.48(1).

14 https://www.crownlaw.govt.nz/assets/Uploads/AGCivilLitigationValues31Jul2013.pdf

15 At [5.7].

16 High Court Rules 2016, r 5.48(3).

Issues arising from the information gathering process

3.37 The information-gathering process raises particular issues where allegations of criminal conduct are raised.

3.38 Where allegations of criminality are first tested in the criminal process, an accused person is afforded particular procedural protections in the interests of fairness and justice. However, there is no obligation on the victim of a crime to make a criminal complaint before lodging civil proceedings and many choose not to do so.

3.39 For the reasons explained in *J (and other plaintiffs in the DSW litigation group) v Attorney-General*[17] many claimants are not willing to speak to the Police about their experiences. Accordingly, in civil claims alleging abuse in care there generally has not been a criminal prosecution. The first time that the court is being asked to determine factual matters of serious criminal offending is in a civil trial – and typically the alleged offender is not a party to those civil proceedings.

3.40 There are a number of factors to consider in the Crown's approach to individuals who have been accused of criminal offending:

(a) The Crown needs to assess the factual allegations made in order to determine whether to defend the allegations as well as whether to make any concessions or reach agreement with the plaintiffs on facts that are agreed. The factual assessment will need to be based, at least in part, on the evidence of relevant individuals – including those against whom allegations are made.

(b) Where individuals against whom allegations are made are not parties to the proceedings, which is normally the case, issues of natural justice and fairness can arise. Even if the Crown does not need to interview those individuals, natural justice concerns can arise, particularly if the Court is likely to make findings about their conduct.

(c) Given the potential for individuals to be under investigation or to be charged with criminal offences, as the Law Officer ultimately responsible for the Crown's prosecution process, the Solicitor-General must ensure that the process of contacting, and possibly interviewing, such individuals does not jeopardise or interfere with possible investigations and future prosecutions.

(d) As explained below, as a result of the decision in *J (and other plaintiffs in the DSW litigation group) v Attorney-General*[18] the Crown is not able to refer allegations of criminal conduct to the Police in the DSW litigation without consent of the individual concerned or leave of the Court.

3.41 Accordingly, where civil allegations are made that, if proven, would constitute criminal behaviour, the question that arises is whether the Solicitor-General is obliged or authorised to refer the allegations to the Police (regardless of the position of the instructing agency) either before or after proceeding to interview witnesses about these allegations.

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17 [2018] NZHC 1331; upheld by the Court of Appeal in *Attorney-General v J* [2019] NZCA 499.

18 [2018] NZHC 1331; upheld by the Court of Appeal in *Attorney-General v J* [2019] NZCA 499.

Analysis undertaken during psychiatric hospital litigation

3.42 In 2004, during the course of civil litigation brought by former psychiatric patients in respect of Porirua Hospital, Crown Law gave particular consideration to these issues.

3.43 Counsel from the (then) Criminal Process and Government Business teams met in late 2004 to discuss how the investigations should be conducted – in terms of any warnings or cautions that needed to be given by counsel to interviewees. The issue of when (and if) the Office must refer allegations and admissions of serious criminal offending to the Police was also raised. Those present (including Deputy Solicitor-General (Public Law), Karen Clark (now her Honour Justice Clark); and Deputy Solicitor-General (Criminal), Nicola Crutchley) determined that counsel should develop a memorandum for the Deputy Solicitors-General outlining a proposed approach for their consideration.

3.44 The result was a memorandum to the Deputy Solicitor-General (Public Law) and the Acting Deputy Solicitor-General (Criminal) dated 10 April 2006 entitled *Reports of Criminal Offending Arising in the Course of Preparation of Civil Claims Against the Crown*.[19] The memorandum was authored by the Government Business Team, mainly by Crown Counsel Simon Barr and myself, with input from the Criminal Process Team.[20]

3.45 The memorandum relevantly concluded that:

(a) To ensure evidence gathered would be available for use in any future prosecution(s), Crown Law should generally advise proposed interviewees, in writing:

(i) the general nature of the allegations made, including specifics of any made against the interviewee;

(ii) Crown Law does not act for the interviewee and the purpose of the interview is to obtain information for the defendant in defending the litigation;

(iii) the interview will not be in confidence, it is voluntary, the interviewee does not have to answer any question put and can terminate the interview at any time; and

(iv) the interviewee is entitled to seek independent legal advice at any stage.

(b) To facilitate the giving of evidence by potential witnesses, particularly those named in the proceedings, there may be times when it is appropriate for the defendant to pay for the provision of independent legal advice (to be assessed on a case by case basis).

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19 Una Jagose to Karen Clark and John Pike, Memorandum "Reports of Criminal Offending Arising in the Course of the Preparation of Civil Claims Against the Crown (RHM189/57)", 10 April 2006, NTP.1.012.00006. Provided to the Royal Commission in response to NTP 1 with receipt confirmed on 2 December 2019.

20 The background to the development of the memorandum and the surrounding circumstances is addressed in a cover memorandum entitled "Investigating psychiatric hospital civil claims: referring to the Police admissions of criminal offending", 10 April 2006, NTP.1.012.00008. Provided to the Royal Commission in response to NTP 1 with receipt confirmed on 2 December 2019.

(c) There are unlikely to be any circumstances in which it would be appropriate to offer an interviewee immunity from both criminal prosecutions and indemnity from civil suit.

(d) The decision whether to refer individual reports of historic criminal offending to the Police for investigation is a matter of discretion for the Solicitor-General acting in the public interest, taking into account the following factors:

(i) The seriousness of the reported offending;

(ii) The specificity of the report of offending;

(iii) Whether the offending has been admitted or alleged;

(iv) The reliability of the report of offending;

(v) Whether the reported offending is already a matter before the civil courts;

(vi) The choice of the complainant not to make a criminal complaint;

(vii) The accused staff members' current occupation; and

(viii) Any barriers to investigations (such as statutory time limits, or death of the alleged offender).

(e) From these factors, the following general propositions could be stated:

(i) Admissions of offending of more than a minor nature generally should be referred to the Police;

(ii) Allegations of serious criminal offending (such as serious assault or sexual offending) generally should be referred to the Police *except where* the only allegation is in a statement of claim.

3.46 Based on those conclusions, none of the allegations set out in the statements of claim for the psychiatric hospital claims required referral to the Police at that time.

3.47 As outlined in my accompanying memorandum to the Deputy Solicitors-General,[21] I was of the view that Crown Law should not refer mere allegations in a statement of claim to the Police. That would mean we were constantly referring statements of claim, potentially raising expectations that the Police would investigate the allegations, and perhaps suggesting that Crown Law considered the claims to have merit when that view would not, on a statement of claim alone, have been reached.

3.48 I considered the position was different where the instructing agency wished to refer the allegations to the Police, as had occurred in March 2006 when the Child, Youth and Family Service referred a compilation of allegations against particular individuals in social welfare institutions by prospective plaintiffs, or

21 "Investigating psychiatric hospital civil claims: referring to the Police admissions of criminal offending", 10 April 2006, NTP.1.012.00008. Provided to the Royal Commission in response to NTP 1 with receipt confirmed on 2 December 2019.

where the Police asked us for information about such allegations. In either case, we would cooperate.

Referral of criminal allegations raised in civil proceedings

3.49 By way of direct answer to the Royal Commission's query (NTP 34, Question 1 c), Crown Law has not adopted a formal policy after the memorandum of 10 April 2006. But the thinking it contains has guided, and continues to guide, our approach.

Crown approach to referrals

3.50 The Crown approach has had to evolve to account for a significant difference between the psychiatric hospital abuse claims and the child welfare abuse claims. The difference is that in the psychiatric hospital claims the allegations were truly historic, primarily in the 1950s, 1960s and 1970s. The institutions had significantly changed, in practice, in legal structure, in oversight – or no longer existed.

3.51 Unlike the psychiatric hospital claims, many of the child welfare claims are more contemporary. They are therefore more likely to have a direct impact on current policies or practices. Furthermore, some of the allegations are made against people who may continue to work with tamariki and rangatahi either for or on behalf of the Government agency. As noted by the Court of Appeal, the Ministries of Social Development and Education, who are the defendants in the majority of the child welfare claims, have sought to pass some of the details disclosed by claimants in their claims to third parties such as the Police, so that the information can be used for purposes unrelated to the Crown's defence of the claims, such as allowing Police to investigate the allegations and where appropriate to prosecute the alleged abusers.[22]

3.52 The Crown's approach to referrals in the context of child welfare claims has been considered by the High Court and Court of Appeal. As outlined in my evidence for the redress hearing,[23] the High Court in *J (and other plaintiffs in the DSW litigation group) v Attorney-General*[24] ordered that the Crown was not to disclose information contained in documents on the Court file to a non-party without leave of the Court, except in specified situations.[25] Without the consent of the plaintiff, leave is required to refer any information contained in documents on the Court file to the Police.

Managing criminal allegations in the context of a civil hearing

3.53 Crown Law has continued to consider the appropriate approach to adopt in the rare situations where allegations of criminal conduct will be considered by a

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22 *Attorney-General v J* [2019] NZCA 499 at [1].

23 Amended Brief of Evidence of Una Rustom Jagose for the Crown Law Office – Redress, 28 February 2020, at pp 32 to 34.

24 [2018] NZHC 1331; upheld by the Court of Appeal in *Attorney-General v J* [2019] NZCA 499.

25 Where the disclosure is for the purpose of the conduct or settlement of the litigation; where the plaintiff consents; or where the disclosure is between the Ministry of Social Development, Oranga Tamariki or the Ministry of Education or within those organisations for the purposes of ensuring the safety of children

Court in the context of civil proceedings[26], in light of the 2006 memorandum and the Court orders in relation to referrals.

3.54 Where allegations of criminal offending are made in relation to people who the Crown wishes to speak to for the purposes of responding to the civil proceedings:

(a) Counsel seek consent of the people who have made the allegations (the plaintiffs and/or their witnesses, via counsel) to refer the allegations to the Police. If consent to a referral is not provided, Crown Law then makes a decision about whether or not to seek leave of the Court to make a police referral, taking into account the wishes of the complainant and any other relevant circumstances.

(b) Prior to interviewing any person against whom a criminal allegation has been made, Crown Law takes steps to ensure that the interview will not inadvertently cut across any lines of Police investigation. Crown Law does that by providing the person's name (i.e. the alleged offender's name), and a high level description of the type of offending, and approximate date, to the Police (but without any information whatsoever about the details of the offending or the complainant). (The plaintiff's counsel's consent is sought in advance to this approach).

(c) Prior to interviewing a person against whom a criminal allegation has been made, that person is advised in advance and in writing about the nature of the allegations made about them, the purpose of the interview and its voluntary and non-confidential nature. They are advised that Crown counsel are not providing them with legal advice and that they should seek independent legal advice in relation to the allegations made.

(d) Counsel continue to keep under review the question of seeking consent or leave for a police referral, as further information arises in the course of the briefing process.

(e) Counsel work with the plaintiff's counsel, and seek Court directions, to ensure that any natural justice concerns arising for individuals can be appropriately managed.

4 CROWN LAW'S INVOLVEMENT IN THE 1977 INQUIRY INTO LAKE ALICE CHILD AND ADOLESCENT UNIT (NTP 34, QUESTIONS 2 & 3)

4.1 The Royal Commission has asked whether Crown Law had any role in or arising out of the 1977 Inquiry into Lake Alice conducted by Stipendiary Magistrate William Mitchell.

4.2 The answer is yes.

4.3 Records indicate then Solicitor-General (Mr Richard Savage QC) arranged the appointment of Mr C M Nicholson (later his Honour Justice Nicholson), then a

[26] Most historic claims are resolved by alternative dispute resolution processes and are not progressed in Court.

barrister and solicitor within the office of the Auckland Crown Solicitor, as counsel to assist the Inquiry. This was prompted by contact from the Department of Social Welfare and followed consultation with Mr Mitchell.[27]

4.4 We have not identified any records indicating that Crown Law was involved in the development of the Order in Council constituting the Inquiry.

4.5 On 7 February 1977, the Department of Social Welfare formally instructed the Solicitor-General to arrange for the representation of the Director-General of Social Welfare, and the Department generally, at the Inquiry hearings.[28]

4.6 Mr Patrick Keane, then Crown Counsel at Crown Law (later his Honour Justice Keane), subsequently represented the Crown parties at the Inquiry hearings: the Director-General of Social Welfare, the Department of Social Welfare and the Department of Health.

4.7 Although we do not have a transcript of Inquiry proceedings, Mr Keane's handwritten notes from the hearing indicate he made an opening address, was involved in calling and examining witnesses for the Departments of Social Welfare and Health, and made closing submissions.[29]

4.8 A file note of a conversation between (then) Judge Keane and Margaret White in 2000 recalls Judge Keane's limited recollection of the Inquiry proceedings at the time.[30] Judge Keane recalled "reworking material at the Department of Social Welfare" and receiving instructions from Dr Mirams, the Director-General of Health. He also recalled briefing Dr Leeks, who he was representing under the auspices of the Director-General of Health.

4.9 Crown Law does not hold records of any particular advice given by Mr Keane during the Inquiry proceedings, though it is clear he was involved in the preparation of evidence and witnesses, and his handwritten notes suggest he made submissions as to the law in closing.[31]

4.10 There are no records to indicate Crown Law had a particular role arising from the Inquiry's report, which may reflect the generally exculpatory nature of the Inquiry's findings.

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27 See the File note of the Solicitor-General dated 1 February 1977 (OIA.31.01.0110) and letter from the Solicitor-General to the Auckland Crown Solicitor dated 2 February 1977 (OIA.31.01.0109). Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

28 See the letter from Mr J Gavin to the Solicitor-General dated 7 February 1977 (OIA.31.01.0107). Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

29 Handwritten notes, OIA.31.01.0179, OIA.31.01.0188, OIA.31.01.0204, OIA.31.01.0218, OIA.31.01.0241, OIA.31.01.0249, OIA.31.01.0265, OIA.31.01.0283, OIA.31.01.0323, OIA.31.01.0327, OIA.31.01.0345, OIA.31.01.0366, OIA.31.01.0370, OIA.31.01.0375, OIA.31.01.0377, OIA.31.01.0385, OIA.31.01.0389, OIA.31.01.0399, OIA.31.01.0401, OIA.31.01.0402, OIA.31.01.0409, OIA.31.01.0416, OIA.31.01.0442, OIA.31.01.0450, OIA.31.01.0469, OIA.31.01.0470, OIA.31.01.0472, OIA.31.01.0508, OIA.31.01.0510. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

30 File Note, "Lake Alice – Conversation with Judge Keane", 12 December 2000, OIA.06.05.0125. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

31 See, for example, OIA.31.01.0345. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

5 MCINROE LITIGATION (NTP 34, QUESTIONS 4 & 5)

Introduction

5.1 The Royal Commission has asked a series of questions regarding Crown Law's conduct of litigation involving Ms Leonie McInroe.[32]

5.2 I was not involved with this proceeding, having joined Crown Law the same year it was settled. None of the counsel responsible for carriage of the litigation remain within our employment, although Crown Law has consulted with former Crown Counsel (now District Court Judge) Ian Carter who I understand is in direct contact with the Royal Commission.

5.3 As a consequence, my responses to the Royal Commission's questions are largely derived from the documentary record. A full narrative of events derived from Crown Law's files and referencing relevant documents is attached to my brief of evidence as **Appendix A**.

5.4 However, there are two preliminary points to raise.

5.5 First, I record my conclusion that the Crown caused unnecessary delays in Ms McInroe's claim being advanced in the Court and this should not have happened.

(a) There were some delays in the litigation that are simply the sort of delays that happen as claims develop, approaches change or appeals on interlocutory matters are sought. However, the Crown failed to meet some deadlines for steps (notably discovery and filing a statement of defence) – without adequate excuse and without Ms McInroe's or the Court's agreement. That is Crown Law's responsibility. I say that even though the file shows that the Ministry of Health was particularly slow in terms of providing adequate records for discovery steps. The obligation is on Crown counsel to meet the Court's deadlines, or to do something formal about that. If our instructing agency is not meeting the required deadlines, that should be escalated through the agency hierarchy, and further steps taken when there is a reasonable basis for not being able to meet the default timetable. Such further steps include seeking an extension to the timetabling from the Court and in negotiation with counsel for the other side. Simply delaying without excuse – as is evident from the file - is not good enough.

(b) I have already said that the apology given to Ms McInroe was inadequate in that it appeared to be given because it had to be, as part of some agreement in settlement, but didn't express any real regret for what had occurred. Having reviewed the file in more detail I can also say that it was not simply delays that the Crown should have apologised for. Delays in meeting statutory timeframes are a frequent part of complex litigation but with proper communication or a Court ordered change to timetable, these can be accommodated. What the delays represented, though, was a lack of empathy or consideration of Ms McInroe as a person. I think this is a reasonably modern view, however. Crown counsel need to understand that in litigation we have the power of the Crown behind us and we are frequently dealing with people at their

[32] NTP 34, Questions 4 and 5.

most vulnerable. Holding a significant part of people's lives in our hands as Crown counsel is a responsibility we have to be aware of and take very seriously – at the same time as acting for, and not avoiding or confusing our duties to, our client, the Crown. A particular example that stands out to me, and which I saw Ms McInroe address in her evidence in 2020, is that Crown counsel obtained access to Ms McInroe's personal diaries and did not treat them, or Ms McInroe, with the dignity she deserved. Ms McInroe was entitled to be treated with dignity at all times, no matter how vigorously we were defending the claims in law, and we did not meet that reasonable expectation.

(c) I take this opportunity, on behalf of Crown Law, to apologise unreservedly to Ms McInroe. We did not treat Ms McInroe with respect and dignity. We caused her additional trauma in what was already a difficult part of her life. I have agreed, along with other current Crown counsel, to meet with Ms McInroe once this part of the Royal Commission is completed and I sincerely hope that doing so will go some way to addressing the pain we have caused.

5.6 Second, the Royal Commission's question 4 is prefaced by a reference to my having said "the proof was in the file" in respect of Lake Alice claims. That needs some explanation, given the balance of the questions in Question 4.

(a) It is fair to say that when the Lake Alice claims were first received they were primarily analysed by reference to legal defences, with limited attention given to the underlying facts. It was not until 1999 that the incoming Labour administration determined not to take a legalistic approach to the issues but rather face the factual allegations head on. On that basis, the files held by the Crown themselves revealed that the plaintiffs' allegations – being admitted to Lake Alice as children who were troubled rather than suffering a recognised psychiatric illness, and for whom psychiatric treatments were administered to alter their behaviour, as opposed to treating a recognised psychiatric illness – were more than likely true. Whether or not there were legal defences such as good faith treatment of what might have been legitimately seen as behavioural disorders, the Government accepted that what the record showed was conduct it was not prepared to defend.

5.7 But, to put this into context, at the time Ms McInroe's claim was filed, and through until the 1999 change of Government, the Crown's instructions were to defend the case on the statutory defences available, irrespective of whether the factual allegations could have been made out.

5.8 So, while looking at Ms McInroe's medical file from Lake Alice now shows many of the facts not in dispute, the focus on defending the claim on the basis of the ACC, Limitation and Mental Health Act bars meant there was not a focus on the facts. That is borne out by the three statements of defence filed by the Crown. With the exception of admitting Ms McInroe was a patient at Lake Alice during certain periods, allegations were denied. That seems to be because the claim pleaded facts in a particular way about their lawfulness. That is, certain facts were given as particulars of allegations of unlawful conduct or breaches of duty (which were denied).

Steps taken to prepare statement of defence

5.9 The Royal Commission has asked what steps Crown Law took in order to prepare a statement of defence to Ms McInroe's civil claim, and who Crown Law contacted for comment (Ministries, private individuals and former employees).[33]

5.10 As detailed in Appendix A, Ms McInroe's claim was received on 17 October 1994. In accordance with the High Court Rules in force at the time, the Attorney-General ought to have filed a statement of defence within 30 days. However, the first statement of defence does not appear to have been filed until early April 1995.

5.11 A review of the file indicates that Crown Law sought instructions from the Ministry of Health in October 1994, but that instructions were not in fact received until sometime after February 1995. Crown Law also sought documents from the relevant health authority, which were ultimately provided on 29 March 1998.

5.12 In providing the draft statement of defence to the Ministry of Health for comment, the responsible Crown counsel (Ms Brenda Heather) noted that, having considered the documents and the statement of claim, she considered the Crown should seek to have the claim struck out on the basis that the ACC bar applied and the claim was made outside the applicable limitation period. She stated that the statement of defence was largely pro forma in anticipation of an application to strike out being made.

5.13 There is nothing on the file to indicate that Crown Law sought comment from anyone other than the Ministry of Health in preparing the first statement of defence.

5.14 A criticism might be made that Ms McInroe's allegations should have been tested more thoroughly by that point. However, I observe that it is frequently the case that potential witnesses to allegations cannot be identified and interviewed until after a statement of defence is required to be filed. If necessary, an amended statement of defence can be filed once the allegations have been considered more thoroughly and more information becomes available through the discovery process. And, here, the focus on the claim being untenable on the law appears to have meant not much specific attention appears to have been given early on to the facts as pleaded.

5.15 In this case, it also appears that Crown Law experienced significant delays obtaining access to the relevant documents, which likely contributed to the limited consultation on the draft statement of defence.

5.16 I also observe that from the file it appears that no one, at least at this early stage, was aware of – or drew connections between - the two inquiries into similar allegations at Lake Alice which may have offered a different insight into the way the Crown approached Ms McInroe's claim. At this level of hindsight it cannot be said what might have occurred, but it seems surprising that the Ministry of Health did not connect the litigation about events in the 1970s with the criticisms that were made of the institution in a similar timeframe.

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33 NTP 34, Question 4 a.

Findings of Chief Ombudsman Powles

5.17 The Royal Commission has asked whether Crown Law referred to the findings of Chief Ombudsman Powles in his 1977 report when carrying out its initial evaluation of Ms McInroe's claim.[34]

5.18 There is nothing on the file to indicate the Chief Ombudsman's findings were considered in the initial assessment of the claim. As I note immediately above, the fact potential connections between the concerns in those inquiries (particularly the Chief Ombudsman's) does not appear to have been identified is surprising.

Steps taken to evaluate the strength of the claim between 1994 and settlement

5.19 The Royal Commission has asked what steps were taken to evaluate the strength of Ms McInroe's claim between 1994 and settlement.[35]

5.20 I consider the following steps (detailed in Appendix A) are discernible from the file:

(a) Review of pleadings and research about the law relating to ACC, Limitation Act and Mental Health Act.

(b) Review of the documentation discovered by Ms McInroe;

(c) Review of documentation identified and discovered by the Crown;

(d) Review of statements of former staff members obtained by The Investigation Bureau;

(e) Attendance at mediation with Ms McInroe;

(f) Review of Ms McInroe's patient files by Dr Garry Walter;

(g) Review of report by Dr Brinded following independent medical evaluation of Ms McInroe; and

(h) Associated legal research and analysis.

5.21 Given Ms McInroe's claim was also handled, in its latter stages, by the same counsel responsible for the Grant Cameron initiated litigation (Grant Liddell), counsel would also have been aware of the many statements made by other Lake Alice claimants.

5.22 It is important to recognise that the strength of a claim at law depends on both the truth of the facts alleged and the proper application of the law to those facts. In this case, the strength of Ms McInroe's claim at law was never determined by the courts. Instead, the parties chose to negotiate a settlement without putting the claim to the test.

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34 NTP 34, Question 4 b.

35 NTP 34, Question 4 c.

No expert psychiatric evidence prior to application to strike out claim

5.23 An application to strike out Ms McInroe's claim (filed jointly with Dr Leeks) was filed on or about 1 June 1995.

5.24 The Royal Commission has asked whether expert psychiatric evidence was sought by Crown Law prior to filing the strike out application.[36] There is nothing on the file to indicate that expert psychiatric evidence was sought at that stage.

5.25 An application for strike out is determined on the basis that the facts as pleaded are assumed to be true. The threshold is a high one; that the claim is so untenable that it could not possibly succeed. The High Court found the claim didn't meet that high bar and refused to strike the claim out.

Dr Leeks' attendance at mediation in 1998

5.26 As detailed in Appendix A, Dr Leeks travelled to New Zealand to attend a mediation of the claim on 30 June 1998.

5.27 The Royal Commission has asked whether Crown Law informed the New Zealand Police of the fact that Dr Leeks travelled to New Zealand for the purposes of the mediation.[37]

5.28 There is nothing on the file to indicate the New Zealand Police were informed. Confidentiality appears to have been important to both the mediation going ahead and the potential for it to result in a settlement. Crown Law does not appear, at that time, to have formed a firm view on the strength of the allegations against Dr Leeks and, to the best of my knowledge, there was no active investigation of Dr Leeks by the New Zealand Police at that time and nor was there a warrant for his arrest.

5.29 I now recognise the deleterious effect the mediation had on Ms McInroe, from her evidence given last year. There is nothing on the file to indicate the impact on Ms McInroe was known to, or recognised by, the Crown. Indeed the file indicates that, between the lawyers, the joint mediation with Dr Leeks was mutually agreed.

Review of Ms McInroe's patient files by Dr Garry Walter

5.30 On 7 March 2001, Crown Law (Grant Liddell) wrote to Dr Garry Walter asking him to review Ms McInroe's patient files and asking him to give his expert opinion on various questions of relevance to the proceedings.[38]

5.31 The Royal Commission has asked why Dr Walter was instructed to review these patient files and why he wasn't instructed earlier.[39]

5.32 Addressing the first part of the question, the best answer comes from Mr Liddell's letter of instruction (at paragraphs [4] to [6]). In summary, it appears Mr Liddell was seeking Dr Walter's expert view on:

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36 NTP 34, Question 4 d.

37 NTP 34, Question 4 e.

38 Liddell, "Your Review of Files Concerning McInroe and [L] Our Ref: HEA007/214, 302 and 306", 7 March 2001, OIA.29.02.0003. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

39 NTP 34, Question 4 f.

(a) Causation – whether the events alleged by the plaintiffs could reasonably have caused the harm they alleged, or whether some other intervening cause might be responsible.

(b) Accepted medical practice at the time – whether anything in the material indicated conduct outside what could reasonably have been considered medically appropriate.

(c) The use of electric current as a form of aversion therapy.

(d) Whether the plaintiffs ought to be subjected to independent medical evaluation. (Although I note Mr Liddell must have decided this was appropriate prior to receiving Dr Walter's report given the date on which applications were filed).

5.33 In my view, the instruction of Dr Walter was an entirely orthodox attempt to test the plaintiffs' allegations.

5.34 In terms of timing, Mr Liddell's letter of instruction indicates that Dr Walter had already been engaged to provide expert opinion on the Grant Cameron claims. The McInroe litigation proceeded slowly following the strike out application being brought and decided and attempted settlement of the claims. The timing of the instruction to Dr Brinded appears to be because the Crown was preparing for the substantive trial.

Requirement for independent medical evaluation

5.35 On 3 April 2001, the Crown filed an application under s 100 of the Judicature Act 1908 to require Ms McInroe to submit to independent medical evaluation. The application was granted (by consent) on 10 April 2001.

5.36 The examination was conducted on 24 April 2001 at the Mason Clinic in Auckland. The medical examiner was Dr P Brinded and Ms McInroe was supported by Dr Louise Armstrong (psychiatrist).

5.37 The Royal Commission has asked why Ms McInroe was required to submit to psychiatric evaluation and why it was necessary for that assessment to take place at the Mason Clinic.[40]

5.38 Section 100 of the Judicature Act 1908 (now s 44 of the Senior Courts Act 2016) authorised the High Court to order a person who was a party to a civil proceeding to undergo a medical examination where the physical or mental condition of the person was relevant to a matter in the proceeding.

5.39 In this case, the reason an examination was sought is set out in the application for orders. In particular, it was considered:[41]

(a) that medical examination was necessary to determine the accuracy of Ms McInroe's allegations as to her psychological and emotional conditions;

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40 NTP 34, Question 4 g.

41 Notice of second defendant's interlocutory application for order under: section 100 of the Judicature Act 1908, OIA.29.01.0216. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

(b) that medical examination of Ms McInroe was necessary to determine whether or not the events alleged in the statement of claim caused or contributed to her psychological and emotional conditions;

(c) that because limitation was an issue, medical examination of Ms McInroe was necessary to determine whether or not she had suffered under:

(i) a disability that had prevented her bringing the proceedings at an earlier time; or

(ii) an emotional or psychological condition that affected when she might reasonably have discovered all of the factual elements of her claim.

5.40 As noted above, Ms McInroe consented to the examination.

5.41 As to the location of the examination, there is nothing on the file to indicate why the Mason Clinic was chosen. I presume it was a location that was known to Dr Brinded and had the facilities he required.

5.42 I have read and listened to Ms McInroe's evidence at the redress hearing and I now understand and regret that the choice of venue added to Ms McInroe's trauma. Based on the file it appears that Ms McInroe was aware of, and consented – through her counsel - to the location. Neither party appears to have foreseen the impact the venue would have on Ms McInroe, as the file shows Mr Liddell did in fact offer to consider more suitable venues if that was preferred but that offer was not taken up.[42]

Crown's claim for indemnity against Dr Leeks

5.43 The Attorney-General filed and served a notice and statement of claim seeking contribution and indemnity from Dr Leeks on 5 June 2001.[43]

5.44 The Royal Commission has asked why the Crown sought indemnity from Dr Leeks and why the application for indemnity was filed in 2001.[44]

5.45 The statement of claim against Dr Leeks provides the best insight into the reasons the Crown sought contribution and indemnity from him.[45]

5.46 In short, it was alleged that in the event the Crown was held liable to Ms McInroe this liability was because of the breach of legal duties owed by Dr Leeks. In other words, the Crown considered that, if Ms McInroe's allegations were proven, Dr Leeks was primarily responsible and ought to reimburse the Crown for putting it in that position.

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42 Liddell Email, "[L], McInroe cases: HEA007/214 , 302 and 306", 23 February 2001, OIA.28.03.0225. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

43 Liddell, "McInroe v Leeks & Attorney-General CP117/99 Our Ref: HEA007/214", 5 June 2001, OIA.28.04.0453. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

44 NTP 34, Questions 4 h and 4 i.

45 Statement of Claim (under Rule 163) by Second Defendant against First Defendant: Contribution and Indemnity, 4 June 2001, OIA.29.01.0221. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

5.47 In particular, it was alleged that Dr Leeks owed a duty to the Attorney-General and/or Ms McInroe to act:

(a) without bad faith;

(b) with reasonable skill and care;

(c) so as not to unlawfully confine Ms McInroe against her will;

(d) so as not to, without lawful excuse or the consent of Ms McInroe, assault or batter her or cause her to be assaulted or battered;

(e) without negligence in breach of a duty of care owed to Ms McInroe; and

(f) without breach of fiduciary duties owed to Ms McInroe.

5.48 As to the timing of the application, I can only speculate. At the time the application was filed, the matter appeared to be heading for trial and counsel no doubt thought it prudent to preserve the Crown's ability to recoup from Dr Leeks any damages it was required to pay to Ms McInroe, as well as its costs in defending the proceedings.

5.49 I note that the application was filed after Dr Walter's report was received by Crown Law and it is possible the contents of that report influenced counsel's thinking, but the file makes clear such an application was being considered prior to that point.[46]

Impact of Grant Cameron litigation

5.50 The Royal Commission has asked whether, and how, the pending class action by plaintiffs represented by Grant Cameron affected the strategy adopted by Crown Law in defending the McInroe litigation.[47]

5.51 By way of preliminary comment, I note that the question anticipates that only Crown Law determines the approach to civil litigation. I have said in this brief, and in earlier evidence, that is not the case. Crown Law is influential in these decisions, but is not determining approaches in a vacuum. The Crown, more broadly, developed and adopted the litigation strategy, including changing that strategy in the context of the Crown's response to the Grant Cameron-led Lake Alice claims.

5.52 Based on a review of the file, it is very clear that the Grant Cameron litigation had a direct effect on the way in which the McInroe litigation was run. In particular:

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46 Carter Memorandum, "McInroe v Leeks and the Attorney-General; Wellington High Court; CP 117/99 [L] v Leeks & Attorney-General; Wellington High Court; CP 116/99 McInroe & [L] v Leeks & Attorney-General; Court of Appeal; CA 217/99 HEA007/214 (McInroe); HEA007/302 ([L])", 27 June 2000, OIA.28.03.0325, at [16] and [17]. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

47 NTP 34, Question 4 j.

(a) When the Grant Cameron claimants first gained attention, the counsel responsible for the respective matters (Ian Carter and Grant Liddell) agreed to coordinate their responses;[48]

(b) The McInroe litigation was seen as a potential guide to the prospects of defending the Grant Cameron claims;[49]

(c) Mr Carter appears to have been concerned that settlement of the McInroe litigation during mediation at a higher level than offered would have set a benchmark for the Grant Cameron claims;[50]

(d) Counsel were concerned to avoid the undesirable possibility of different and possibly conflicting outcomes being arrived at in respect of the two sets of claims;[51] and

(e) Mr Liddell appears to have been concerned about the prospect of the McInroe matter proceeding to trial without considering the impact on the Grant Cameron claims.[52]

5.53 I do not consider this to be surprising. The Crown faced a large number of claims from the Grant Cameron group that were very similar to that advanced by Ms McInroe. There was an obvious correlation between the claims and counsel were right to be cautious about the potential for conflicting outcomes.

5.54 More significantly, as the Government started to take a different approach to the Grant Cameron claims and settle them in the alternative process that was ultimately used, the Government also directed that Ms McInroe's claim be settled in the same way as the Grant Cameron claims. That was contrary to earlier Ministerial direction relating to Lake Alice claims that, on the basis of the legal analysis of the strength of the claims, the claims should be defended and tested.

Account of procedural steps taken by Crown Law

5.55 The Royal Commission has asked for an account of the procedural steps taken by Crown Law in progressing the McInroe claim from 1994 to 2002.[53]

5.56 As noted above, a full narrative from the file, referencing relevant documentation, is attached as **Appendix A** to this brief of evidence.

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48 Liddell Memorandum, "Lake Alice Claims", 11 August 1997, OIA.28.01.0014. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

49 Carter, "McInroe v Leeks and Attorney-General; Wanganui High Court; CP 12/94 (Applications Transferred to Wellington High Court for Hearing); [L] v Leeks and Attorney-General; Wanganui High Court; CP 2/97", 19 August 1997, OIA.28.02.0424; Carter, Handwritten notes, 30 April 1998, OIA.28.02.0275. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

50 Carter Memorandum, "McInroe v Leeks and the Attorney-General; Wellington High Court; CP 117/99 [L] v Leeks & Attorney-General; Wellington High Court; CP 116/99 McInroe & [L] v Leeks & Attorney-General; Court of Appeal; CA 217/99 HEA007/214 (McInroe); HEA007/302 ([L])", 27 June 2000, OIA.28.03.0325. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

51 Carter, "Lake Alice", 3 February 1999, OIA.28.02.0063. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

52 Liddell Email, "Re: Lake Alice proceedings …", 5 November 1999, OIA.28.03.466. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

53 NTP 34, Question 4 k.

Crown Law was responsible for unjustified delay in the conduct of the McInroe proceeding

5.57 The Royal Commission has asked whether Crown Law accepts it was responsible for unjustified delay in the conduct of the McInroe litigation, and to what extent.[54]

5.58 As already set out, I accept that Crown Law was responsible for unjustified delay in the conduct of Ms McInroe's litigation and for that I unreservedly apologise on Crown Law's behalf.

5.59 I consider the following delays were attributable to Crown Law:

(a) Delay in filing the Attorney-General's statement of defence;

(b) Significant delays in the discovery of documents, including in discovering documents following mediation;

(c) Delays in responding to counsel's correspondence.

5.60 The delay in the provision of documentation, while also attributable to instructing agencies, was unacceptable. The time taken in responding to correspondence was longer than I consider appropriate when viewed as a whole.

5.61 My assessment of the file, with hindsight, is that a number of steps taken by Crown Law could have been done earlier (perhaps concurrently with other steps) – including the application for independent medical evaluation of Ms McInroe and the review of her patient files.

5.62 Also in retrospect, the application to strike out Ms McInroe's claim was perhaps not as well thought through in advance as it should have been. While I accept that as the Crown was, as I have said in earlier evidence, facing a civil claim to which the law appeared to provide a complete answer testing the legal issues was a reasonable approach. But, as the Court found, the threshold for strike out must be met assuming the pleadings are true. A contest on the facts – here, whether the conduct of Lake Alice and its employees was medically indicated treatment or abusive mistreatment – does not lend itself easily to a strike out.

5.63 So I also accept that Crown Law bears some responsibility for the time taken in relation to the strike out application being determined. However, the file also indicates it is possible that the application would have been pursued by Dr Leeks as a separate defendant in any case.

5.64 Crown Law was not responsible for delay related to determination of the mode of trial. Both the High Court and the Court of Appeal determined that trial by Judge alone was appropriate and I do not consider Crown Law can properly be criticised for supporting Dr Leeks' application for that mode of trial.

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54 NTP 34, Question 4 l.

6 GRANT CAMERON LITIGATION (NTP 34, QUESTIONS 6 TO 12)

Introduction

6.1 The Royal Commission has also asked a series of questions regarding the claims commenced by Grant Cameron.

6.2 Again, I was not personally involved in this litigation and none of the responsible counsel remain at Crown Law. While Crown Law has recently engaged with former Crown Counsel Grant Liddell, my responses to the Royal Commission's questions are almost exclusively derived from the documentary record.

6.3 A detailed narrative of events derived from Crown Law's files and referencing relevant documents is attached to my brief of evidence as **Appendix B**.

Initial evaluation of class action

6.4 The Royal Commission has asked what initial evaluation of the class-action commenced by Grant Cameron was undertaken by Crown Law.[55]

6.5 As detailed in Appendix B, Mr Cameron first approached the government on behalf of his clients in July 1997. From the outset, Mr Cameron sought the establishment of an alternative process to resolve their claims, expressing a preference for an informal mediation/arbitration process.

6.6 It was not until 20 April 1999, following a decision by Ministers to test liability in court, that statements of claim were filed. The claims were lacking detail (Mr Cameron later described them as "pro forma in nature")[56] and the Crown sought further particulars in May and June 1999.[57]

6.7 Particularised statements of claim were never filed. As a consequence, the Crown was not in a position to file a statement of defence and never did so. The litigation was ultimately superseded by the expert determination process agreed by the parties and undertaken by Sir Rodney Gallen.

6.8 However, as outlined in Appendix B, the file reveals the following steps were taken by Crown Law to assess the strength of the claims made by Mr Cameron's clients:

(a) Identification and location of patient, staff and other relevant files that may contain evidence as to the validity of the claims;

(b) Establishing an information management strategy between relevant agencies;

(c) Review of claimant statements provided by Mr Cameron on a "without prejudice basis" against the file material held by the Crown;

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55 NTP 34, Question 6.

56 Grant Cameron, "Lake Alice", 28 July 2000, OIA.06.03.0002. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

57 Letter from Grant Liddell and Rebecca Ellis to Grant Cameron Associates, "Lake Alice Proceedings", 21 May 1999, OIA.06.02.0340; Rebecca Ellis, "Lake Alice Proceedings Our Ref: HEA007/306", 4 June 1999, OIA.06.02.0325. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

(d) Seeking the views of Dr Leeks on the claims made against him and potential witnesses;

(e) Engagement of forensic psychiatrists to undertake psychiatric evaluations of the claimants/file reviews and an expert witness to provide evidence on the use of ECT internationally and review the reports of the forensic psychiatrists;

(f) Engagement of The Investigation Bureau to conduct interviews of former Lake Alice staff members;

(g) Briefing sessions between Crown counsel and former Lake Alice staff members and Mrs Leeks;

(h) Obtaining an opinion from Dr Basil James regarding the operation of Lake Alice;

(i) Obtaining an opinion from Professor Werry regarding the historical use of paraldehyde;

(j) Requesting the claimant's medical files; and

(k) Consideration of legal defences, including the ACC bar, Limitation Act 1950 and Mental Health Act 1969.

Steps taken to prepare statement of defence

6.9 The Royal Commission has asked what steps Crown Law took in order to prepare the statement of defence to the class action, and who Crown Law contacted for comment (Ministries, private individuals and former employees).[58]

6.10 As mentioned above, no statement of defence was ever filed in response to the proceedings commenced by Mr Cameron. Crown Law sought particularised statements of claim so that it could file a defence and make a decision on the necessity for leave to file the claim out of time, but particularised claims were not provided. In the circumstances, Crown Law was not required to file a statement of defence and the litigation was ultimately overtaken by events.

6.11 However, as outlined in Appendix B, Crown Law initially engaged with the Ministry of Health, Ministry of Education, Children and Young Persons Service and the Department of Social Welfare to identify and locate information of relevance to the claims. Appendix B outlines more detail of the private individuals contacted either by or for the Crown to consider the allegations.

Ministers' decision to test liability in Court

6.12 The Royal Commission has asked what advice Crown Law provided to the Ministers of Finance and Health which led to the decision in February 1999 to test liability for the Lake Alice claims in Court.[59]

6.13 On 4 February 1999, Crown Law advised the Ministry of Health on the advantages and disadvantages of the Crown addressing the Lake Alice claims via litigation, as opposed to embarking on an alternative dispute resolution (**ADR**)

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58 NTP 34, Question 7.

59 NTP 34, Question 8.

process.[60] Crown Law's advice was provided to the Minister of Health, Rt Hon Wyatt Creech, as an attachment to a briefing from the Ministry of Health dated 12 February 1999.[61]

6.14 Crown Law advised:

(a) It was difficult, if not impossible, at that stage to weigh the strength of the intended plaintiffs' claims as a matter of law in the absence of more certainty as to the facts. The numerous "technical defences" available to the Crown and other difficulties associated with making claims based on events alleged to have happened over 20 years prior meant the chances of success for most plaintiffs would be small. But this needed to be weighed against the prospect that the more emotive aspects of the claim might sway any adjudicator in the plaintiffs' favour.

(b) The advantages of proceeding down the litigation path from the Crown's perspective were that:

(i) it requires each claimant to put forward recognised causes of action;

(ii) it requires each claimant to "prove" the necessary ingredients for recovery for each cause of action; and

(iii) it would enable the Crown to take full advantage of the legal immunities and defences available to it.

(c) The primary disadvantage of litigation from the Crown's perspective related to the risk of extended adverse publicity.

(d) The primary advantages of ADR were:

(i) more control over the process;

(ii) more control over timing;

(iii) more control over the identity of the decision-maker;

(iv) significantly less opportunity for publicity; and

(v) less opportunity for criticism of the Crown for requiring the plaintiffs to go through a trial process.

(e) Disadvantages of ADR would depend on decisions that had not yet been made.

(f) There were unlikely to be significant cost savings in ADR – Crown Law considered that either approach would require the exchange of information and no less preparation would be required.

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60 Letter from Rebecca Ellis and Grant Liddell to David Clarke, "Lake Alice Claims", 4 February 1999, OIA.06.01.0193. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

61 Ministry of Health, "Lake Alice Claims – Deciding how the Government will respond", 12 February 1999, OIA.06.01.0132. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

(g) If the Ministry considered there was real prospect of other such claims in "the mental health arena", that would be a factor strongly militating against the use of the courts for resolving the Lake Alice claims.

(h) The key question was whether Ministers wished the claims to be dealt with on their merits: "If Ministers want the Crown to respond to the claims, an appropriate ADR mode is preferable because it will avoid any precedential effect, and the Crown may be able to manage publicity impacts, if that is wanted. If Ministers want to resist the claim at all costs, and seek to defeat them by whatever means, they should litigate."

6.15 On 2 March 1999, Crown Law advised Grant Cameron that the Minister of Health considered ADR was premature, and that litigation was needed to clarify the legal issues raised by the claims.[62]

Decisions revisited by new Government

6.16 The Royal Commission has asked whether the Labour-led government under Prime Minister Rt Hon Helen Clark adopted a different approach to resolving the litigation to that taken by the previous National-led Government (and if so, how).[63]

6.17 As detailed in Appendix B, the answer is yes.

6.18 After receiving briefings on the Lake Alice claims and the decisions of the previous Government, the incoming Labour Government requested the Ministry of Health and Crown Law to provide a paper revisiting the decision to litigate.

6.19 On or about 30 March 2000, the Ministry of Health provided the Prime Minister and Minister of Health with the paper requested.[64]

6.20 The Ministry of Health considered there were sufficient risks, particularly regarding adverse public opinion, for the Government to revisit the decision. Crown Law advised that although there were "technical defences" available, the law relating to these defences was not clear-cut and the claims presented a considerable litigation risk.

6.21 The Treasury favoured litigation because of uncertainty in the law and the precedent effect of adopting an alternative approach.

6.22 This advice, with its competing positions from agencies, went to Cabinet for ultimate decision on how the Crown should respond.

6.23 In May 2000, Cabinet directed:

(a) Officials and Crown Law to commence negotiations with Mr Cameron, with a view to establishing a negotiation-based ADR process for the purpose of resolving out of court the claims the former patients had filed in the High Court;

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62 Grant Liddell, "Lake Alice Our Ref: HEA007/306", 2 March 1999, OIA.06.02.0552. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

63 NTP 34, Question 9.

64 Ministry of Health, "Lake Alice Claims: Review of the decision to proceed by litigation", 30 March 2000, OIA.06.03.0278. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

(b) The Ministry of Health to seek Crown Law advice on the likelihood of success of technical defences; and

(c) The Ministry of Health to report back to the Cabinet Policy Committee by 26 July 2000 on:

(i) the outcome of the negotiations with Mr Cameron;

(ii) the likelihood of success of technical defences; and

(iii) the funding required for the ADR process.

6.24 Negotiations with Mr Cameron ensued with some disagreement between the parties about the way in which matters ought to proceed – particularly regarding the need for psychiatric evaluations and their timing.

6.25 Further Cabinet decisions were made in early October 2000. Cabinet approved an $8 million funding package to attempt to settle the Lake Alice claims through direct negotiation, or failing a negotiated settlement, through a hybrid mediation/arbitration model.

6.26 As I have noted above, Cabinet also instructed Crown Law to attempt to resolve the claims brought by Ms McInroe and another separately represented claimant in the same manner as the claims brought by the other former patients within the constraints of the proposed $8 million funding package.

Crown Law advice on different ADR options

6.27 The Royal Commission has asked what advice Crown Law provided to the government on the various alternative dispute resolution options proposed.[65]

6.28 As outlined in Appendix B, a review of the file indicates Crown Law provided the following advice on different ADR options:

(a) On 21 August 1997, Crown Law provided the Ministry of Health with advice on the implications of adopting particular fact finding processes, including the process then proposed by GRO-C and Grant Cameron.[66]

(b) Crown Law's 4 February 1999 advice (discussed above) addresses the advantages and disadvantages of ADR generally.[67]

(c) Crown Law was consulted on the Cabinet papers submitted in 2000 and it was Crown Law's recommendation to pursue a two-phase approach of direct negotiation followed by hybrid mediation/arbitration (if necessary).

6.29 Crown Law was also engaged in negotiations with Mr Cameron regarding the form of ADR.

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65 NTP 34, Question 10.

66 Liddell, "Lake Alice Legal Claims – Legal Risk Assessment", 21 August 1997, OIA.05.06.0241. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

67 Letter from Rebecca Ellis and Grant Liddell to David Clarke, "Lake Alice Claims", 4 February 1999, OIA.06.01.0193. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

6.30 However, it is important to note that the form of expert determination ultimately adopted was the result of direct discussions between the Solicitor-General (Terence Arnold) and Mr David Caygill (who had become involved to facilitate an agreement between Crown Law and Grant Cameron Associates).[68]

Settlement figures

6.31 The Royal Commission has asked what advice Crown Law provided in respect of reaching the settlement figure of $6.5 million to be distributed to survivors.[69]

6.32 Crown Law was consulted on the Cabinet papers that ultimately approved the settlement figure of $6.5 million, but there is nothing on the file to indicate Crown Law provided any advice on the figure adopted.

6.33 Although Crown Law provided the Ministry of Health with some informal advice on potential liability in monetary terms,[70] it estimated a 40-50% chance the Crown would be exposed to liability of between $0 and $345,000 and this advice bears no correlation to the figures chosen. I observe that part of the difficulty of advising on the potential liability lies in the novel character of the claims, the ACC bar to general damages, and other legal barriers to the claims being successful. The longstanding presence of the ACC regime in NZ means that finding precedent to use as a prediction for likely sums of damages a court might award in the area of personal injury is difficult.

6.34 The Solicitor-General's memorandum to the Prime Minister seeking approval of the settlement reached reflects this:[71]

> I should emphasise that the Cabinet Policy Committee's decisions were not based on advice that $6.5 million (or $8 million) represented the Crown's potential liability to these claimants. The investigations, medical examinations and legal research undertaken to date do not establish clear liability on the Crown, and, to the extent that there is some legal risk, it arises only in respect of some claimants. As I understand it, the Committee's decisions reflected the Government's desire to resolve this potentially difficult and contentious dispute in a fair, principled and expeditious way whether or not the Crown was, in technical legal terms, liable to all claimants. This is the spirit in which the settlement discussions were carried out.

Appointment of Justice Gallen and subsequent report

6.35 The Royal Commission has asked:[72]

(a) What were the terms of Justice Gallen's appointment; and

(b) Why did Crown Law seek to have his report suppressed?

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68 Memorandum from the Solicitor-General to the Prime Minister, "Grievances of Former Patients of Lake Alice Hospital: Proposed Settlement", 15 May 2001, OIA.07.02.0057. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

69 NTP 34, Question 11.

70 Chris Chapman, "HEA007/306 – Lake Alice: Informal estimate of liability/cost", 31 August 2000, OIA.06.04.0382. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

71 Memorandum from the Solicitor-General to the Prime Minister, "Grievances of Former Patients of Lake Alice Hospital: Proposed Settlement", 15 May 2001, OIA.07.02.0057. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

72 NTP 34, Question 12.

Terms of appointment

6.36 The terms on which Sir Rodney Gallen was appointed for the first round of claimants are recorded in the "Agreement to Submit to Expert Determination" dated 19 September 2001.[73]

6.37 Under that agreement, Sir Rodney was appointed to determine the apportionment of $6.5 million between the claimants. As a starting point, $1 million of that fund was divided equally between the claimants. The remainder of the $6.5 million was to be apportioned based on "supervening principles of fairness, justice, equity and good conscience."[74]

6.38 In particular:[75]

(a) Sir Rodney was entitled to disregard the effect of the ACC regime;

(b) the determination was to commence with a presumption that there should be an equal division between the claimants, with Sir Rodney to identify and consider any facts or principles upon which any movement away from that presumption might be justified;

(c) Sir Rodney had full and unfettered discretion to determine whether the claimants should be dealt with as individuals or in classes;

(d) classes of claimants would be dealt with on a "like for like" basis in the absence of compelling reasons to the contrary;

(e) Sir Rodney was entitled to take into account any wish expressed by a majority of the claimants as to equal division of the award, but this would not be determinative in itself;

(f) Sir Rodney was entitled to have regard to legal principles regarding the calculation of compensatory or exemplary damages and the division of damages between multiple plaintiffs, but was not bound by such considerations; and

(g) Sir Rodney was entitled to have full regard to the events in each claimant's life before, during and after their residence at Lake Alice and to place emphasis on those events or consequences as he determined.

6.39 In making an apportionment for any individual claimant, Sir Rodney was required to consider the total evidence submitted on behalf of all claimants.[76] No reduction in apportionment was to be made only because the statements of individual claimants could not be corroborated unless Sir Rodney considered it reasonable to do so.[77]

6.40 Sir Rodney was entitled to regulate his own procedure for the determination.[78]

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73 Agreement to Submit to Expert Determination, 19 September 2001, OIA.10.04.0002. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

74 At [4.1].

75 At [4].

76 At [6.3].

77 At [6.4].

78 At [8.3].

6.41 The terms on which Sir Rodney Gallen was appointed for the second round of claimants are recorded in agreements executed between the Crown and each claimant,[79] and in the Ministry of Health's "Instruction for Sir Rodney Gallen", noted by the Minister of Health on 2 July 2002 and by the Prime Minister on 17 July 2002.[80]

6.42 Applicants qualified for consideration of an award where Sir Rodney Gallen was satisfied of:[81]

(a) Residence at the Lake Alice Hospital Child & Adolescent Unit between January 1972 and December 1977; and

(b) That at the time of the residence at the Lake Alice Hospital and Child & Adolescent Unit the applicant was aged 17 years or under.

6.43 However, Sir Rodney Gallen could, in special circumstances, also consider for ex gratia payment those young persons aged 17 years and under who were accommodated at Lake Alice Hospital in the 1970's and treated by Dr Leeks or his staff, but who may not have been accommodated at the Child and Adolescent Unit and whose experiences and circumstances were otherwise indistinguishable from qualifying applicants for an award.

6.44 The principles to be applied by Sir Rodney to the second round of claimants were similar, with the exception that Sir Rodney was not asked to apportion a total award between second round claimants, but to award each applicant a minimum amount of $5,000.[82] Again:[83]

(a) Sir Rodney was to apply supervening principles of fairness, justice, equity and good conscience in assessing the award to be made to each claimant;

(b) Sir Rodney was entitled to disregard the effect of the ACC regime;

(c) no reduction in apportionment was to be made only because the statements of individual claimants could not be corroborated unless Sir Rodney considered it reasonable to do so;

(d) Sir Rodney was entitled to have regard to legal principles regarding the calculation of compensatory or exemplary damages and the division of damages between multiple plaintiffs, but was not bound by such considerations; and

(e) Sir Rodney was entitled to have full regard to the events in each claimant's life before, during and after their residence at Lake Alice and to place emphasis on those events or consequences as he determined.

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79 For example, see "Agreement to resolve grievance of former patient of Lake Alice Hospital Child and Adolescent Unit", 7 May 2003, OIA.09.03.0264 (**Example agreement**). Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

80 Health Report, "Lake Alice – Second Round Process and Instruction to Sir Rodney Gallen", 19 June 2002, OIA.01.02.0368. The Draft Instructions are at Appendix C. Provided to the Royal Commission in response to NTP7 on 14 May 2020.

81 See Draft Instructions at [11].

82 Draft Instructions at [14].

83 Example agreement at [5].

6.45 Sir Rodney was again authorised to regulate his own procedure.[84]

6.46 Notwithstanding the above, in deciding the quantum of award to be made to individual applicants Sir Rodney was instructed to endeavour to achieve a result whereby, in similar cases, both a settled claimant and a new applicant for ex gratia payment would receive a similar level of net award. Sir Rodney was instructed to take into account that new applicants were not to be comparatively advantaged over the Round 1 claimants, and that:[85]

(a) Applicants would be receiving Crown-funded legal assistance from Dr David Collins QC in presenting their claim;

(b) Applicants had not assumed any litigation risk in applying for an ex gratia payment;

(c) Applicants would not have incurred any (significant) litigation or negotiation costs in obtaining an individual award (considering that, at the time the Government invited potential applicants who were at the Lake Alice Child and Adolescent Unit to come forward to be considered for an award it was also announced that a Crown-funded lawyer would be appointed to assist applicants).

6.47 On 1 August 2002, the instructions to Sir Rodney were clarified so that all that was required to make a comparative assessment of claimants' costs and expenses (in relation to Round 1 claimants) was to determine an appropriate individual assessment based on the criteria applied to Round 1 claimants, and then apply a 30% deduction to reach the determination or settlement amount.[86]

6.48 In September 2006, the 30% deduction was successfully challenged in *Zentveld v Attorney-General* on the basis that the determination agreement between the Ministry of Health and Mr Zentveld constituted a binding contract which had never been repudiated, and was therefore valid.[87] Sir Rodney Gallen's original determination was the amount payable. As a result, on 20 June 2007 the Cabinet Policy Committee agreed that further payments equal to the 30% notional deductions used in the calculation of the compensation payments made to Round 2 claimants should be made to each Round 2 claimant; and that no notional deduction should be made in the assessment of further eligible claimants who came forward after the Round 2 determinations.[88]

Dispute regarding publication of Justice Gallen's report

6.49 On 11 October 2001, the Executive Assistant to the Solicitor-General (Ms Jan Fulstow) had a telephone conversation with a reporter from the Evening Post who indicated that his newspaper had a copy of Sir Rodney Gallen's confidential

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84 Example agreement at [4.3].

85 Draft Instructions at [13].

86 Letter from Grant Adam to Sir Rodney Gallen, "Lake Alice Resolution Process – Instruction to Make Determinations", 1 August 2002, OIA.01.05.0234. Provided to the Royal Commission in response to NTP7 on 14 May 2020.

87 Unreported, DC Wellington, CIV-2003-085-000528, 11 September 2006.

88 CPC Minute of Decision, "Further Payment in Settlement of Lake Alice Claims", 20 June 2007, OIA.10.01.0450. Provided to the Royal Commission in response to NTP7 on 14 May 2020.

report.[89] Publication would have been at odds with the report's confidential status.

6.50 The following day, Crown Law filed applications for orders confirming the confidentiality of the report in an effort to prevent its publication.[90] The applications were filed at the direction of the Solicitor-General after consulting with the Attorney-General and the Prime Minister.[91] The notice of application stated that Sir Rodney's report was confidential according to the terms of the settlement between the parties and asserted that it would prejudice the management and conduct of Sir Rodney's further determination if his report was made public prior to completion of that process.[92]

6.51 The applications were heard by Ronald Young J that day. His Honour stated that it seemed probable there had been a breach of the confidentiality provisions of the settlement agreement. However, while his Honour was prepared to restrain publication of the material in Parts 2 and 3 of Sir Rodney's report (containing material that went directly to the individual plaintiffs' claims), he did not consider it appropriate to prevent the publication of Part 1 (which contained a summary of the evidence of the plaintiffs as to their treatment at Lake Alice). With regard to Part 1, his Honour noted that "[m]uch if not all of the material is already in the public arena … [and] [i]t would be difficult to argue that the confidentiality provisions of the agreement were intended to prevent the plaintiffs ever telling stories of their treatment at Lake Alice."[93]

6.52 On 16 October 2001, counsel for the Evening Post applied to have Ronald Young J's orders varied to authorise publication of Part 2 of Sir Rodney's report (regarding the method of allocation among claimants, but not the allocations themselves).[94]

6.53 Crown Law (Grant Liddell) responded on 18 October 2001, stating that the Crown was prepared to agree to the proposed amendment of Ronald Young J's orders provided the Evening Post agreed there was no issues as to costs and provided a fair reporting of the Crown's reason for seeking orders in the first place.[95] As to that reason, Mr Liddell stated: "The Crown's sole concern in making these applications was to avoid prejudice to the settlement of other claims concerning Lake Alice, most of which are yet to received, and all of which

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89 Affidavit of Jan Fulstow in support of ex parte application for confidentiality orders, 12 October 2001, OIA.08.02.0403.

90 Grant Liddell, "Lake Alice proceedings GRO-B & ors v Attorney-General, CP 91/99, and GRO-B & ors v Attorney-General, CP92/99 – *ex parte* applications for confidentiality orders", 12 October 2001, OIA.08.02.0388; Notice of *ex parte* interlocutory application by defendant for interim orders as to confidentiality, 12 October 2001, OIA.08.02.0389. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

91 Letter from Grant Liddell to Grant Cameron Associates, "Lake Alice", 12 October 2001, OIA.08.02.0379. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

92 Notice of *ex parte* interlocutory application by defendant for interim orders as to confidentiality, 12 October 2001, OIA.08.02.0389. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

93 GRO-B *& Ors v Attorney-General;* GRO-B *& Ors v Attorney-General*, unreported, HC, CP 91/99 and CP92/99, 12 October 2001. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

94 Izard Weston, "GRO-B and Others v Attorney-General – 91/99 and GRO-B and others v Attorney-General", 16 October 2001, OIA.08.02.0318. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

95 Grant Liddell, "Lake Alice proceedings: GRO-B & ors v Attorney-General, CP 91/99, and GRO-B & ors v Attorney-General, CP92/99 – *ex parte* applications for confidentiality orders: your client's application to vary", 18 October 2001, OIA.08.02.0199. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

are yet to be determined. It was concerned that knowledge of the details of Sir Rodney's report might encourage embellishment or fabrication of claims."

6.54 Counsel for the Evening Post replied the same day, stating that they were unaware of the Crown's motive in seeking orders and rejecting the conditions stipulated by Crown Law.[96] The hearing of the Evening Post's application was subsequently set down for 26 October 2001.[97]

6.55 Crown Law subsequently applied for an amendment to Ronald Young J's orders to facilitate what was sought by the Evening Post. The amendment was made by consent, with the Crown taking the position that most if not all of the material in Part 2 of Sir Rodney's report was already in the public domain.[98]

7 Engagement with the New Zealand Police regarding Lake Alice (NTP 34, Questions 13 to 17)

Requests from the New Zealand Police for information regarding Lake Alice

7.1 The Royal Commission has asked:

(a) What requests have the New Zealand Police made to Crown Law from 1994 to the present day, seeking information to assist with their inquiries concerning the Lake Alice Child and Adolescent Unit?[99]

(b) How did Crown Law respond to each request?[100]

7.2 From a review of our records, Crown Law has identified three such requests. Full details of these requests and Crown Law's responses, including references to documents already disclosed to the Royal Commission,[101] are provided in **Appendix C**. I was involved in one of the requests but I do not recall the events and have had to rely on the record, as outlined in the material prepared from the files in Appendix C.

7.3 In summary, the three requests were:

(a) In 2006, the Police requested documents relating to Mr Paul Zentveld. In particular, Police sought a copy of a bound book of materials that Mr Zentveld advised he had prepared for the purpose of civil proceedings. Crown Law (Grant Liddell) had no recollection of the book, but advised the Police that if Mr Zentveld could provide written authority, the Crown would be willing to provide the Police with a copy of material it held relating to Mr Zentveld's time at Lake Alice. Crown Law has no record of any further communication between Mr Liddell and the New Zealand Police regarding this request, nor any record of how the request was ultimately resolved.

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96 Izard Weston, "Re: GRO-B and others v Attorney-General – CP 91/99 GRO-B and others v Attorney-General – CP 92/99", 18 October 2001, OIA.08.02.0155. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

97 Department for Courts, "CP 91/99 & CP92/99 GRO-B & ors v Attorney-General", 19 October 2001, OIA.08.02.0147. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

98 Email from Grant Liddell, "Part 2 of Sir Rodney's report", 26 October 2001, OIA.08.02.0056. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

99 NTP 34, Question 13.

100 NTP 34, Question 14.

101 NTP 34, Question 15.

(b) In 2009, the Police requested copies of statements made by Lake Alice staff members for the purposes of civil proceedings. Police asked Crown Law for the statements of certain named witnesses who had provided the Police their consent to access the statements, were deceased, had dementia, or could not be located but whom Police believed were important to the investigation. Crown Law held statements for six of the witnesses identified by the Police. After some correspondence with the Ministry of Health, Crown Law sought a waiver of privilege from the Attorney-General to enable the release of the relevant witness statements to the Police.

(c) In 2020, the Police requested information about former Lake Alice patients to assist with their current investigation into Lake Alice. Crown Law's response to this request is ongoing, but of note:

(i) On 18 March 2020, the Attorney-General agreed to waive privilege over certain documents, including all statements by former Lake Alice staff members held by Crown Law. These documents were provided the following day.

(ii) On 16 April 2020, the Governor-General consented to the release of the 1977 Mitchell Inquiry documents to the Police and these documents were provided on 23 April 2020.

(iii) In December 2020 and January 2021, the Police provided Crown Law with 58 privacy waivers from former Lake Alice patients authorising the release of their personal information. After obtaining a waiver of privilege, Crown Law provided documents relating to two survivors in December 2020 by way of an example of the type of material held by Crown Law. In January 2021, the Police confirmed the documents contained information they had not previously seen and requested the information regarding the other 56 survivors. Crown Law has engaged three new staff to assist with the volume of information to be provided. To date, redactions to the documents sought have comprised redactions to protect the privacy of other individuals, namely other Lake Alice patients; no redactions have been made in relation to legal privilege.

Crown Law opinion regarding complaints to the Police of criminal conduct at Lake Alice

Background

7.4 In June 2003, the Police sought a legal opinion from Crown Law's Criminal team on whether the Police had sufficient evidence to consider laying charges in response to complaints made by former patients at Lake Alice.

7.5 The Royal Commission has asked whether, in preparing its opinion, the Criminal team at Crown Law was aware of:[102]

[102] NTP 34, Question 16.

(a) the civil proceedings instigated by Ms McInroe and another claimant and the information obtained by Crown Law for the purposes of that proceeding; or

(b) the class action brought by Grant Cameron and the information obtained by Crown Law for the purposes of that proceeding.

7.6 The Royal Commission has also asked whether the Criminal team sought and/or received any of that information.

7.7 As there are no persons with first-hand knowledge of these events remaining at Crown Law, these events have been reconstructed from the documentary record.

7.8 On 25 June 2003, Deputy Solicitor-General (Criminal) Nicola Crutchley met with Detective Superintendent Larry Reid and received a file to review. The materials provided by the Police to Crown Law included copies of reports and case notes related to Mr Hakeagapuletama Halo from 1970 to 1976, documents associated with the 1977 Mitchell Inquiry, statements from Mr Halo taken in 2000, and an internal Police letter from Superintendent Emery.[103] Crown Law no longer holds the file in question, which I understand was returned with Crown Law's final opinion.[104]

7.9 In a memorandum to Crown counsel Luigi Lamprati the following day,[105] Ms Crutchley stated that "[t]his is not the normal request for advice on the decision to prosecute, in that Mr Reid is still at the stage of considering whether there should be an investigation of the complaints made."[106] It is not common for the Police to make such requests for advice at the early stage of their work. The Police have the facts, the expertise, and the inhouse legal teams to advise decision makers. As Ms Crutchley said this request was at the stage of whether to investigate the allegations as a criminal matter.

7.10 Ms Crutchley advised Mr Lamprati that the Government Business Unit was dealing with civil claims relating to Lake Alice, noting that "[w]e generally keep separate matters both sides of the Office are dealing with."[107] Ms Crutchley also made clear that she wanted to be kept fully advised of progress, noting that "[t]he civil claims are highly political ones about which there has been considerable publicity in the past" and stating that she would need to keep the Solicitor-General updated.[108]

7.11 On 19 December 2003, after considering the materials provided by Police in relation to Mr Halo's complaint, Mr Lamprati provided a memorandum to Ms Crutchley setting out his view that laying charges could not then be justified on the material available, but that a final decision should not be made until further

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103 A list of the materials provided by Police to Crown Law is noted at [4] of Nicola Crutchley, "Lake Alice complaints to Police of criminal conduct", POL.01.01.0010, 16 April 2004. Provided to the Royal Commission in response to NTP 6 on 25 August 2020.

104 Crutchley opinion, POL.01.01.0010, at [5].

105 This document has not previously been disclosed to the Royal Commission, having recently been discovered on a hard copy file, and has been provided separately to this brief of evidence.

106 Crutchley memorandum, at [2].

107 Crutchley memorandum, at [4].

108 Crutchley memorandum, at [12].

inquiries were conducted.[109] Mr Lamprati expressed the view that ECT administered as a form of punishment was "reprehensible conduct and, quite likely, criminal behaviour".[110] Mr Lamprati also advised that the alleged misconduct "against young people who were virtually at the mercy of those in charge of them, must be looked into".[111]

7.12 On 1 April 2004, Senior Crown Prosecutor Barney Thomas provided a memorandum to Ms Crutchley, in which he reviewed Mr Lamprati's memorandum.[112] Mr Thomas noted he fully agreed with Mr Lamprati's observations, including that further inquiries should be conducted before a final decision on investigation or prosecution was reached.[113]

7.13 On 16 April 2004, Ms Crutchley provided Crown Law's formal legal opinion to Police.[114] This opinion largely repeated the contents of Mr Lamprati's memorandum. Crown Law advised that, on the basis of the material supplied in relation to Mr Halo, there was not sufficient evidence to found a criminal investigation at that stage, but that a final decision should not be made until the following further inquiries were conducted by Police:[115]

(a) Obtaining a copy of the report of the 1977 inquiry report that Mr Halo had referred to, together with any transcript of any relevant documentation available.

(b) Interviewing Dr Oliver Sutherland, who apparently worked with the inquiry.

(c) Interviewing other staff named by Mr Halo (in particular Dempsey Corkran, Brian Stabb, Dennis Hesseltine and Anna Natusch).

(d) Ascertaining what other records might be available other than those already supplied, particularly in relation to former staff.

(e) Obtaining information about the types of ECT described by Mr Halo, to confirm whether there were two different kinds and, if so, when and why each were used.

7.14 Crown Law was of the view that Mr Halo's complaint taken at face value raised serious questions which should be investigated.[116]

Response to specific queries

7.15 Ms Crutchley's memorandum to Mr Lamprati on 26 June 2003 makes clear that she was aware of the existence of civil litigation regarding Lake Alice and that the litigation was being dealt with by the Government Business team.[117] Her

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109 Luigi Lamprati, "Memorandum: POL055/034 – Lake Alice: Criminal Complaints to the Police", POL.01.01.0001, 19 December 2003, at [5]. Provided to the Royal Commission in response to NTP 6 on 25 August 2020.

110 Lamprati memorandum, POL.01.01.0001, at [24].

111 Lamprati memorandum, POL.01.01.0001, at [44].

112 Barney Thomas, "Lake Alice: Criminal Complaints to the Police", POL.01.01.0009, 1 April 2004. Provided to the Royal Commission in response to NTP 6 on 25 August 2020.

113 Thomas memorandum, POL.01.01.0009, at [2]-[3].

114 Crutchley opinion, POL.01.01.0010, 16 April 2004.

115 Crutchley opinion, POL.01.01.0010, at [48] to [55].

116 Crutchley opinion, POL.01.01.0010, at [57].

117 Crutchley memorandum, at [3].

memorandum also records her understanding that the civil claims were "political" and had received considerable publicity. That probably reflects her knowledge that Ministers were involved in the decision making about how to approach the Lake Alice claims as brought by Grant Cameron.

7.16 As Deputy Solicitor-General (Criminal) it is likely that Ms Crutchley was involved in senior leadership meetings or discussions at which the fact of the civil claims were discussed. That would likely have been at a high level if it occurred.

7.17 However, there is nothing on the file to indicate the Criminal team obtained any information about the specific claims. There are no records indicating the Criminal team sought or received information obtained by other teams in relation to the civil claims. Ms Crutchley's opinion appears to have been based solely on the information provided by the Police and this is consistent with the further inquiries that were recommended.

7.18 The Royal Commission has also asked whether Crown Law followed up with the Police as to whether progress had been made to advance the investigation in accordance with the advice given.[118]

7.19 It is not clear from the file whether there was any further contact with the Police about the matter. However, I would not have expected further engagement unless the Police required further legal advice from us - it was a matter for the Police to determine whether to undertake any of the further inquiries that were suggested, evaluate any further material obtained as a result and make a decision to prosecute or not. Given that no prosecution resulted, it appears the Police either decided against making the further inquiries that were suggested; made the inquiries but obtained no relevant information; or made the inquiries and obtained information which supported a decision not to prosecute at that time.

8 UNCAT communications (NTP 34, Questions 18 & 19)

8.1 With respect to the obligations of the New Zealand government to UNCAT, in connection with Lake Alice, the Royal Commission has asked what advice and other contribution Crown Law has provided to the New Zealand government in respect of:[119]

(a) How it should respond to communication 852/2017 submitted by Mr Paul Zentveld; and

(b) Any other response from the time of the 5th Periodic Report to present day.

Crown Law's role in responding to individual communications

8.2 To date there have been two relevant individual communications – communication No. 852/2017 submitted by Mr Paul Zentveld; and

GRO-B

118 NTP 34, Question 17.

119 NTP 34, Question 18.

8.3 I summarised each of these communications, together with the responses of the New Zealand Government, in my evidence for the Royal Commission's redress hearings.[120] I do not repeat that information here.

8.4 As I noted in my previous evidence, Crown Law's role in relation to individual communications to UNCAT is primarily one of co-ordination and advocacy – working with agencies that have policy responsibility in relation to the matter that is the subject of the communication to collect relevant information and present that information to UNCAT as New Zealand's observations on the communication.

8.5 In each case, the communication is first transmitted to New Zealand's Permanent Representative to the United Nations Office at Geneva and, as the State party to the Convention against Torture, New Zealand is invited to provide written information and observations in respect of both the admissibility and the merits of the complainant's allegations. The Ministry of Foreign Affairs and Trade (**MFAT**) then refers the communication to Crown Law to co-ordinate with the relevant agencies and prepare a draft response.

8.6 For both the *Zentveld* and GRO-B communications, counsel from the Constitutional and Human Rights teams within Crown Law liaised with officials from the Ministry of Health and the New Zealand Police to identify factual information responding to the complainant's allegations. In each case, counsel then prepared draft responses - addressing both the admissibility of the communications under the Convention and the merits of the complainants' allegations - for review and approval by the agencies they had liaised with before their ultimate transmittal to UNCAT.

8.7 The draft response to Mr Zentveld's communication was also peer reviewed by (then) Senior Crown Counsel Paul Rishworth QC.

8.8 In relation to Mr Zentveld's communication, Crown Law also prepared, in liaison with the Ministry of Health and the Police:

(a) information and observations in response to additional information submitted to UNCAT by the Citizen's Commission on Human Rights in New Zealand;

(b) New Zealand's response to UNCAT's findings; and

(c) observations in response to a submission from Mr Zentveld's representative dated 13 July 2020.

8.9 At this time, New Zealand is yet to receive UNCAT's views in relation to GRO-B GRO-B communication.

Supporting role for periodic reporting

8.10 The Ministry of Justice has been responsible for preparing New Zealand's Periodic Reports to UNCAT from the 5th Periodic Report, which was submitted in 2007. The Ministry is also responsible for compiling New Zealand's response to

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120 Amended Brief of Evidence of Una Rustom Jagose for the Crown Law Office – Redress, 28 February 2020, at pp. 34 to 35.

UNCAT's concluding observations and follow up questions arising from the reporting process.

8.11 Crown Law is a contributor and subsidiary participant in this process. In particular:

(a) Crown Law provides input to, and comments on, the draft periodic reports and New Zealand's subsequent responses to UNCAT, particularly with regard to domestic litigation.

(b) Crown Law has previously provided counsel to attend as part of the delegations presenting New Zealand's periodic reports (then Deputy Solicitor-General, Cheryl Gwyn (now Justice Gwyn)in 2009; and Crown Counsel, Kristina Muller in 2015). Counsel have attended in a supporting capacity to address any questions that may arise regarding Crown Law's areas of responsibility.

8.12 I understand that New Zealand's 6th and 7th Periodic reports both include information on historic abuse, which Crown Law would have seen and reviewed prior to being submitted.

Specific query regarding chronology

8.13 The Royal Commission has asked why New Zealand did not refer to the first civil action taken by a Lake Alice complainant (*McInroe and* [L] *v AG and Leeks*) in setting out the chronology in its response to Mr Zentveld's communication.[121]

8.14 Based on inquiries with counsel responsible for preparing New Zealand's draft response, I understand the *McInroe and* [L] proceedings were simply not identified as being relevant to Mr Zentveld's communication.

8.15 For completeness, I observe this was the same position for New Zealand's response to GRO-B communication.

GRO-C

Signed: _____

Una Rustom Jagose

Date: 23 April 2021

[121] NTP 34, Question 19.

APPENDIX A – MCINROE LITIGATION

1 Background - commencement of proceedings

1.1 On 8 August 1994, Ms Stephanie Mitchell from Davenports Barristers and Solicitors wrote to then Solicitor-General (John McGrath QC) and Dr Leeks advising an intention to commence civil proceedings against them on behalf of Leoni Frances Fitisemanu (subsequently McInroe).[1] The letter attached the intended statement of claim and asked the recipients to urgently advise whether they would consent to the bringing of the proceeding, or whether it would be necessary for the plaintiff to seek leave under the Limitation Act 1950.

1.2 Crown Law sent copies of the documents to the Ministry of Health on 10 August 1994.[2] Crown Counsel Hamish Hancock was initially responsible.[3] After seeking instructions from the Ministry of Health,[4] Mr Hancock wrote to Ms Mitchell on 29 August 1994 advising that Ms Fitisemanu's claim was statute barred by virtue of the Limitation Act and would be "strenuously defended".[5]

1.3 On 14 October 1994, Ms Phillipa Cunningham (now District Court Judge Cunningham) from Davenports wrote to the Solicitor-General enclosing (by way of service on the Attorney-General) the statement of claim and notice of proceeding as filed with the High Court at Wanganui on behalf of Ms McInroe.[6] Ms Cunningham referenced Davenports' 8 August 1994 correspondence and indicated they had not received a reply.

2 Preparation of statement of defence/initial evaluation of claim

2.1 Crown Law received Ms Cunningham's letter and associated documents on 17 October 1994. A review of the file indicates that Crown Law sought instructions from the Ministry of Health on 18 October 1994, but that as of 15 February 1995 none had been received.[7]

2.2 On 16 February 1995, Crown Counsel Brenda Heather (who had been allocated to the file in November 1994)[8] wrote to Ms Cunningham apologising for the delay in responding to her correspondence and Ms McInroe's statement of claim, noting that the relevant Crown Health Enterprise was taking advice about

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1 Stephanie Mitchell, "Re: Fitisemanu v Leeks", 8 August 1994, OIA.28.01.0380. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

2 Crown Law, "Leoni Frances Fitisemanu v Leeks & Attorney-General", 10 August 1994, OIA.28.01.0369. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

3 Crown Law, "Re: Leoni Frances Fitisemanu", 12 August 1994, OIA.28.01.0368. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

4 Hancock, "Leonie Frances Fitisemanu v Leeks and Attorney-General (Health) Intended Claim", 29 August 1994, OIA.28.01.0356. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

5 Hancock, "Fitisemanu v Leeks and Attorney-General (Health)", 29 August 1994, OIA.28.01.0367. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

6 Cunningham, "L.F. McInroe v S. Leeks and the Attorney-General", 14 October 1994, OIA.28.01.0363. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

7 Brenda Heather, "CP 12/94 McInroe v Leeks & AG", 15 February 1995, OIA.28.01.0356. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

8 Crown Law, "Leoni Frances McInroe v Selwyn Leeks & Health", 10 November 1994, OIA.28.01.0361. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

its ability to release its files to the Ministry of Health and this had delayed matters considerably.[9]

2.3 On 29 March 1995, Ms Heather again wrote to Ms Cunningham.[10] Ms Heather advised that she had received copies of documents provided by the relevant health authority to the Ministry of Health that afternoon and would arrange for the Attorney-General's statement of defence to be filed with the High Court no later than 3 April 1995. Ms Heather again apologised for the delay.

2.4 The same day, Ms Heather sent a draft statement of defence to the Ministry of Health for review.[11] Ms Heather noted that, having considered the documents and the statement of claim, she considered the Crown should seek to have the claim struck out on the basis that it was captured by the ACC bar and was made outside the applicable limitation period. She stated that the statement of defence was largely pro forma in anticipation of an application to strike out being made.

2.5 A handwritten note records that David Clarke from the Ministry of Health rang Ms Heather on 30 March 1995 to provide his views on the draft statement of defence.[12]

2.6 On 31 March 1995, Ms Heather sent the completed statement of defence to the Crown Solicitor in Wanganui for filing with the High Court.[13] A copy was sent to Ms Cunningham that day[14] and to counsel for Dr Leeks on 4 April 1995.[15]

3 Application to strike out claim

3.1 By notice dated 1 June 1995, the defendants (Dr Leeks and the Attorney-General) applied jointly to strike out Ms McInroe's claim.[16] The file indicates the application was drafted by counsel for Dr Leeks.[17] The application relied on four grounds:

(a) The plaintiff's claims were statute barred by the Limitation Act 1950 (s 4).

(b) The plaintiff's claims were statute barred by the Accident Rehabilitation and Compensation Act 1992 (s 14(1)).

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9 Heather, "McInroe v Leeks & Attorney-General", 16 February 1995, OIA.28.01.0355. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

10 Heather, "McInroe v Leeks & Attorney General", 29 March 1995, OIA.28.01.0349. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

11 Heather, "McInroe v Leeks & Attorney General", 29 March 1995, OIA.28.01.353. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

12 Heather, "McInroe v Leeks & Attorney General", 29 March 1995, OIA.28.01.351. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

13 Heather, "McInroe v Leeks, Attorney-General", 31 March 1995, OIA.28.01.0346. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

14 Heather, "McInroe v Leeks, Attorney-General", 31 March 1995, OIA.28.01.0345. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

15 Heather, "McInroe v Leeks, Attorney-General", 4 April 1995, OIA.28.01.0344. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

16 Notice of Application by First and Second Defendants to Strike Out Plaintiff's Claim, 1 June 1995, OIA.28.05.0121. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

17 Heather, "CP 12/94 McInroe v Leeks, Attorney-General", 31 May 1995, OIA.28.01.0333. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

(c) The plaintiff's claims were statute barred by the Mental Health Act 1969 (s 124).

(d) The plaintiff's claims were an abuse of process of the Court.

3.2 By memorandum dated 17 July 1995,[18] all parties agreed that the hearing of the strike out application would be transferred to Wellington and a timetable for the filing of supporting affidavits was set.

3.3 On 25 July 1995, counsel for Ms McInroe filed a notice opposing the defendants' strike out application,[19] together with an application seeking leave (if required) to bring the proceeding out of time (with reference to both the Limitation Act and the Mental Health Act, which each contained provisions limiting the time in which proceedings could be commenced).[20] Ms McInroe swore a supporting affidavit on 10 August 1995.[21]

3.4 On 28 September 1995, Crown Law filed:[22]

(a) An amended application by the defendants for strike out dated 25 September 1995.[23] The only substantive change from the first iteration was the addition of a ground that the plaintiff's claims were likely to cause prejudice, embarrassment or delay in the proceeding (reciting the wording in r 186(b) of the High Court Rules at the time).

(b) A notice dated 27 September 1995 opposing Ms McInroe's application for leave to bring the proceeding out of time.[24] The Attorney-General relied on the provisions of the Mental Health Act 1969, Limitation Act 1950 and Accident Rehabilitation and Compensation Act 1992.

(c) A supporting affidavit from Director of Mental Health Janice Wilson sworn on 27 September 1995.[25] Dr Wilson's affidavit outlined her view of the challenges the Attorney-General would face, in light of the passage of time since the events complained of, in attempting to collect evidence and identify and trace potential witnesses who may have been able to assist with preparing a defence of Ms McInroe's claim.

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18 Memorandum (under Rule 10) by all counsel regarding disposal of defendants' application to strike out plaintiff's claim, 17 July 1995, OIA.28.05.0125. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

19 Notice of opposition by the plaintiff to the defendants' application to strike out plaintiff's claim, 25 July 1995, OIA.28.05.0131. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

20 Notice of application by the plaintiff for leave (if required) to bring the proceeding out of time and for other orders, 25 July 1995, OIA.28.05.0128. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

21 Affidavit of Leoni Francis McInroe in opposition to defendants' application to strike out plaintiff's claim and in support of plaintiff's application for leave (if required) to bring the proceeding out of time and other orders, 10 August 1995, OIA.28.05.0136. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

22 Court filing document, OIA.28.01.0229. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

23 Amended notice of interlocutory application by first and second defendants to strike out plaintiff's claim, OIA.28.01.0275. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

24 Second defendant's notice of opposition to plaintiff's application for leave (if required) to bring proceeding out of time and for other orders, 27 September 1995, OIA.28.01.0245. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

25 Affidavit of Janice Majorie Wilson in support of defendant's amended application to strike out statement of claim and to oppose plaintiff's application for leave to bring action out of time, OIA.28.01.0239. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

3.5 By this stage, Crown Counsel Ian Carter had assumed responsibility for the file within Crown Law.[26]

3.6 The strike out application was initially scheduled to be heard on 5 October 1995,[27] but the hearing was adjourned while Ms McInroe's eligibility for ACC cover was tested. If cover was granted, Ms McInroe's claims in the proceeding would change dramatically and the parties appear to have agreed the hearing ought to await the outcome of ACC's deliberations.[28]

3.7 On 30 January 1996, Ms Cunningham advised Mr Carter that Ms McInroe had been ruled eligible for ACC cover on the basis of medical misadventure.[29] A further adjournment of six weeks was sought and granted by consent to enable Ms McInroe to consider her position.[30]

3.8 Sometime in early March 1996, Ms McInroe's senior counsel (Dr Robert Chambers QC) advised Mr Carter that Ms McInroe would proceed with those parts of the claim that were not affected by the ACC decision.[31] An amended statement of claim was faxed to Crown Law on 19 March 1996.[32]

3.9 The hearing of the strike out and leave applications was set down for, and heard on, 27 March 1996. Master Thomson issued his reserved judgment on 2 August 1996 dismissing the application for strike out.[33] The Master held that he was not able to determine the application of the provisions relied on by the defendants without the full facts before him. Whether or not leave was required to bring the proceedings also required a full assessment of the facts, which was not possible at that stage.

4 Delays in discovery of documents by the Crown

4.1 On 6 July 1995, Ms Cunningham wrote to Crown Law enclosing a notice requiring the Attorney-General to provide discovery of relevant documents.[34] In accordance with the notice and the relevant High Court Rule, and in the absence

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26 Ian Carter, "L. F. McInroe v S Leeks and the Attorney General; Wellington High Court; CP 12/94", 20 September 1995, OIA.28.01.0306. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

27 Department for Courts, "CP12/94 (WN) L F McINROE v S LEEKS & ANOR", 7 August 1995, OIA.28.01.0318. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

28 See Handwritten notes of Ian Carter, 29 September 1995, OIA.28.0227, OIA.28.01.0223 and OIA.28.01.0224; Carter Memorandum, "McInroe v Leeks & Attorney-General; Wanganui High Court; CP12/94 (Applications transferred to Wellington High Court for hearing)", 4 December 1995, OIA.28.01.0206; Carter, "McInroe v Leeks & Attorney-General; Wanganui High Court; CP12/94 (Applications transferred to Wellington High Court for hearing)", 19 January 1996, OIA.28.01.0202. All provided to the Royal Commission in response to NTP 7 on 14 May 2020.

29 Cunningham Facsimile, "re McInroe v Leeks & A-G", 30 January 1996, OIA.28.01.0199. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

30 Carter Facsimile, "McInroe v Leeks & Attorney-General", 31 January 1996, OIA.28.01.0192. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

31 Carter, "McInroe v Leeks & Attorney-General; Wanganui High Court; CP12/94 (Applications transferred to Wellington High Court for hearing)", 18 March 1996, OIA.28.01.0186. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

32 Amended Statement of Claim, 19 March 1996, OIA.28.04.0013. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

33 Judgment of Master J. C. A. Thomson, 2 August 1996, OIA.28.05.0367. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

34 Cunningham, "Your Re: HEA 007/214, McInroe v Leeks & The Attorney General", 6 July 1995, OIA.28.01.0329; enclosing Notice of Discovery Against Second Defendant, 6 July 1995, OIA.28.05.0123. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

of an alternative arrangement agreed between counsel, a list of documents verified by affidavit ought to have been given within 14 days.

4.2 On 13 September 1996, Ms Cunningham wrote to Crown Law noting that no list of documents had been received and referring to the 6 July 1995 notice.[35] Ms Cunningham followed up again on 25 September 1996, advising that if no communication was received within 7 days the plaintiff would apply to the Court for an order requiring discovery be provided.[36]

4.3 On 13 January 1997,[37] Crown Law was served with an order of the Court requiring it to give discovery and provide a verified list of documents. This was followed on 21 February 1997 by an application for the Attorney-General's defence to be struck out and judgment entered for the plaintiff.[38]

4.4 On 7 March 1997, Mr Carter wrote to Ms Cunningham apologising for the delay in responding.[39] Mr Carter noted that he had experienced some practical difficulties preparing a list of documents – both staffing difficulties within Crown Law and in isolating documents from archived files covering the mid-1970s. Having regard to those difficulties, Mr Carter proposed that the Attorney-General's list would be filed and served on or before 11 April 1997; the plaintiff's application for strike out would be adjourned; and the Crown would meet the costs of the plaintiff's application.

4.5 Ms Cunningham agreed (subject to a slight increase in costs payable by the Crown),[40] and the plaintiff's application was subsequently adjourned.[41]

4.6 Also on 7 March 1997, Mr Carter wrote to the Ministry of Health (following up a telephone call on 19 February 1997) outlining the Ministry's discovery obligations and requesting it supply material as soon as possible.[42]

4.7 When the matter was next called in the Master's List on 7 May 1997 a list of documents had still not been provided. As a consequence, the presiding Master ordered that unless the list of documents was filed and served by 16 May 1997,

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35 Cunningham, "McInroe v Leeks & The Attorney General – CP 12/94 Wanganui High Court", 13 September 1996, OIA.28.01.0147. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

36 Cunningham, "McInroe v Leeks and the Attorney General CP12/94 Wanganui High Court", 25 September 1996, OIA.28.01.0145. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

37 Cairns Slane, "Your Ref: HEA007/214, McInroe v Leeks and the Attorney-General", 10 January 1997, OIA.28.01.0142. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

38 Cunningham, "Your Reference HEA 007/214 McInroe v Leeks and the Attorney General CP No. 12/94 – Wanganui High Court", 20 February 1997, OIA.28.01.0138; enclosing Notice of interlocutory application that the defence of the second defendant be struck out and that judgment be sealed accordingly", 17 February 1997, OIA.28.05.0388. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

39 Carter, "McInroe v Leeks and Attorney-General; Wanganui High Court; CP 12/94 (Applications Transferred to Wellington High Court)", 7 March 1997, OIA.28.01.0129. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

40 Cunningham, "McInroe v Leeks and Attorney General Wanganui High Court CP No. 12/94", 10 March 1997, OIA.28.01.0116. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

41 Cunningham Facsimile, "McInroe v Leeks and the Attorney General Wanganui High Court – CP No. 12/94", 19 March 1997, OIA.28.01.0112. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

42 Carter, "McInroe v Leeks and Attorney-General; Wanganui High Court; CP 12/94 (Applications Transferred to Wellington High Court)", 7 March 1997, OIA.28.01.0126. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

the Attorney-General's defence would be struck out. The Crown was also ordered to pay costs.[43]

4.8 The Attorney-General's list of documents was ultimately filed and served on 15 May 1997.[44] Ms Cunningham inspected the documents and took copies of relevant material in June 1997.[45]

5 Emergence of Grant Cameron group of claimants/coordination of response

5.1 In July 1997, a 20/20 documentary about the experiences of Lake Alice survivors was aired and received significant media attention. Then Minister of Health Hon Bill English subsequently made a number of comments in the media indicating concern and identifying a need for further investigation.

5.2 On 6 August 1997, lawyers Grant Cameron and GRO-C met with Hon Bill English, officials from the Ministry of Health and Crown Law (Grant Liddell).[46] Messrs Cameron and GRO-C indicated they had between 60 and 70 clients that had been at Lake Alice and wanted to agree a process to resolve their claims, expressing a preference for an informal mediation/arbitration process.

5.3 Following the meeting, the Ministry of Health sought advice on possible fact finding processes and an assessment of the Crown's risk of civil liability "based on the work [Crown Law had] undertaken to date on the [L] and McInroe claims."[47] Mr Liddell sought Mr Carter's input on that work and they agreed "to coordinate [their] response on this issue with those in McInroe and [L]."[48]

5.4 In draft advice to the Ministry of Health dated 19 August 1997, Mr Carter advised:[49]

(a) That the evidence gathering process in each proceeding was not yet complete and a definitive assessment of the Ministry's chances of defending each proceeding was not possible at that point.

(b) Whether there was in fact mistreatment by Dr Leeks or other staff members at Lake Alice would be determined on the basis of oral evidence. Potential witnesses were still in the process of being

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43 Cameron Ross, "McInroe v Leeks & Attorney General – Wanganui High Court CP 12/94", 8 May 1997, OIA.28.01.0085. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

44 Message from Meryl Carter at Meredith Connell, 15 May 1997, OIA.28.01.0062; Crown Law Facsimile, "McInroe v Leeks & Attorney General – Wanganui High Court CP 12/94", 15 May 1997, OIA.28.01.0066. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

45 Meredith Connell, "Re McInroe v Leeks and Attorney General (Your Ref: HEA 007/214)", 10 June 1997, OIA.28.01.0047. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

46 File Note, "Lake Alice Claims", 7 August 1997, OIA.28.01.0015. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

47 Ministry of Health, "Re Lake Alice Legal Claims – Meeting with the Minister of Health on 6 August 1997", 7 August 1997, OIA.28.01.0020. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

48 Liddell Memorandum, "Lake Alice Claims", 11 August 1997, OIA.28.01.0014. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

49 Carter, "McInroe v Leeks and Attorney-General; Wanganui High Court; CP 12/94 (Applications Transferred to Wellington High Court for Hearing); [L] v Leeks and Attorney-General; Wanganui High Court; CP 2/97", 19 August 1997, OIA.28.02.0424. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

identified and would have to be contacted and interviewed to test the plaintiff's allegations.

(c) The plaintiffs had avoided the ACC bar to compensatory damages by pleading exemplary damages.

(d) Whether or not various legal limitation periods applied would depend on the nature of the oral evidence and it was too early to say what that evidence would establish.

(e) On the limited information available, he assessed there was a 50/50 chance that the Ministry would be held liable for the claims alleged in both proceedings.

5.5 Crown Law's formal advice to the Ministry of Health on possible fact finding processes, which reiterated Mr Carter's draft advice regarding the McInroe and [L] proceedings, was provided on 21 August 1997.[50]

5.6 By letter to the Ministry of Health dated 26 August 1997, Mr Cameron proposed a three phase resolution process:[51]

(a) Inquiry phase (fact finding);

(b) Liability phase (determination of legal liability);

(c) Damages phase (compensation).

5.7 Mr Cameron's letter noted that he had spoken with Dr Chambers QC (senior counsel for Ms McInroe and, by this point, Mr [L]) and that Dr Chambers had indicated his clients may well be prepared to join in any resolution process agreed with the Ministry.

6 Attempted mediation of Ms McInroe's claim

6.1 On 14 October 1997, Ms Cunningham wrote to Crown Law (Karen Clark) proposing either a mediation or arbitration of her client's claims.[52] Ms Cunningham stated she was aware of Mr Cameron's request for an inquiry, but considered that her proposal would be simpler and cheaper, and indicated that she had spoken to Mr Cameron who would be happy to go along with it. Ms Cunningham observed that agreement would need to be sought from counsel for Dr Leeks as a party to mediation or arbitration and advised that, in the meantime, she would be progressing both cases with a view to having them set down for hearing.

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50 Liddell, "Lake Alice Legal Claims – Legal Risk Assessment", 21 August 1997, OIA.05.06.0241. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

51 Cameron, "RE: LAKE ALICE", 26 August 1997, OIA.05.06.0264. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

52 Cunningham, "[L] v Leeks and the Attorney-General – Wanganui High Court CP2/97 and McInroe v Leeks and the Attorney-General – Wanganui High Court – CP 12/94", 14 October 1997, OIA.28.02.0357. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

6.2 Ms Cunningham sent Crown Law a draft notice (or praecipe) requesting that the McInroe proceeding be set down for hearing on 10 December 1997.[53]

6.3 On 23 December 1997, Crown Law (Ian Carter) wrote to Ms Cunningham advising that while it was premature to entertain a mediation or arbitration process for the Grant Cameron claims, the Attorney-General may be prepared to consider a (confidential and without prejudice) mediation of the McInroe and [L] proceedings.[54] Mr Carter stated that for the mediation to be productive it would be necessary for Dr Leeks and his legal representatives to participate and be present. Mr Carter stated that mediation would offer all parties and their counsel the opportunity to more fully appreciate the real issues from the other side's perspective and could result in a settlement which would avoid the stress and expense of a High Court trial.

6.4 Ms Cunningham provided an interim reply on 14 January 1998, advising that she had sought instructions from her clients and had written to counsel for Dr Leeks regarding their willingness to participate in mediation.[55]

6.5 On 29 January 1998,[56] counsel for Dr Leeks (Mr Knowsley) called Mr Carter seeking the Crown's view on Dr Leeks' request (initially made on 5 September 1996)[57] for an indemnity from the Residual Health Management Unit (**RHMU**). Mr Knowsley apparently indicated that Dr Leeks' willingness to participate in mediation would be influenced by the RHMU's position.[58]

6.6 By letter dated 11 February 1998, Ms Cunningham indicated her clients were prepared to engage in a mediation provided the terms could be agreed.[59] Ms Cunningham indicated that if a mediation could not be arranged soon, her clients would pursue the Court process.

6.7 On 27 March 1998, Mr Carter wrote to Mr Knowsley stating that he was unable to recommend to the RHMU that it indemnify Dr Leeks.[60] Mr Carter observed that:

(a) If established by evidence at trial, the allegations against Dr Leeks would constitute something in the nature of physical assault without any medical justification. There was therefore a real issue as to whether Dr

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53 Cunningham, "McInroe v Leeks and the Attorney-General", 10 December 1997, OIA.28.02.0363; Praecipe to set proceedings down for trial, OIA.28.02.0365. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

54 Carter, "McInroe v Leeks and the Attorney-General; Wanganui High Court; CP 12/94 Our Ref: HEA007/214; [L] v Attorney-General; Wanganui High Court; CP 2/97 Our Ref: HEA007/302", 23 December 1997, OIA.28.02.0303. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

55 Cunningham, "McInroe and [L] – Your Ref: HEA007/214 and HEA007/302", 14 January 1998, OIA.28.02.0335. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

56 Carter handwritten notes, 29 January 1998, OIA.28.02.0332. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

57 Rainey Collins Wright & Co, "Re: Palmerston North Hospital Board", 5 September 1996, OIA.28.01.0050. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

58 Carter, "McInroe v Leeks and the Attorney-General; Wanganui High Court; CP 12/94 Our Ref: HEA007/214; [L] v Attorney-General; Wanganui High Court; CP 2/97 Our Ref: HEA007/302", 27 March 1998, OIA.28.02.0301. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

59 Cunningham, "McInroe and [L] Your Ref: HEA007/214 and HEA007/302", 11 February 1998, OIA.28.02.0331. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

60 Carter, "McInroe v Leeks and the Attorney-General; Wanganui High Court; CP 12/94 Our Ref: HEA007/214; [L] v Attorney-General; Wanganui High Court; CP 2/97 Our Ref: HEA007/302", 27 March 1998, OIA.28.02.0301. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

Leeks' actions could be within the scope of his employment by the Palmerston North Hospital Board.

(b) There was also an issue as to whether Dr Leeks was in fact acting in the capacity of employee at all material times.

6.8 Despite this position, Mr Carter stated that he considered mediation was a worthwhile option to pursue, noting that in one recent case conducted by Crown Law an important factor which led the parties to settle was the opportunity which mediation presented to the plaintiffs to confront officials they saw as responsible.

6.9 Mr Carter also wrote to Ms Cunningham on 27 March 1998 suggesting some potential terms for mediation.[61]

6.10 In April 1998, Mr Knowsley advised that Dr Leeks would participate in mediation.[62] The parties then sought to negotiate the terms of the mediation, including the identity of the mediator and an expert psychiatrist to assist them.[63]

6.11 At this stage, it appears that the Ministry of Health considered mediation would at the very least provide a good indication of their risk/exposure to not only the McInroe and L claims, but the wider claims being threatened by Grant Cameron Associates.[64]

6.12 At around this time, an individual from the Citizens Commission for Human Rights contacted the office of the Minister of Health to advise that Dr Leeks was coming to New Zealand and enquire whether the Minister intended to take any action against him.[65]

6.13 On 13 June 1998, Mr Carter wrote to Ms Cunningham regarding the proposed mediation and identified 30 June 1998 as a suitable date.[66] In his letter, Mr Carter noted the enquiry by the Citizens Commission for Human Rights and stated that both he and Mr Knowsley considered it would "not be productive for the proposed mediation to become the subject of publicity whether focused on Dr Leeks or otherwise." Mr Carter stated that the mediation could "only be held on the basis that the fact, time and place of the mediation [would] remain confidential to the parties" and sought confirmation that position was agreed. The file indicates that Dr Leeks subsequently sought a confidentiality agreement, but Crown Law has not located a copy of that agreement among its records.[67]

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61 Carter, "McInroe v Leeks and the Attorney-General; Wanganui High Court; CP 12/94 Our Ref: HEA007/214; [L] v Attorney-General; Wanganui High Court; CP 2/97 Our Ref: HEA007/302", 27 March 1998, OIA.28.02.0320. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

62 Carter, Handwritten notes, 20 April 1998, OIA.28.02.0281. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

63 See Carter, "McInroe v Leeks and the Attorney-General; Wanganui High Court; CP 12/94 Our Ref: HEA007/214; [L] v Attorney-General; Wanganui High Court; CP 2/97 Our Ref: HEA007/302", 3 June 1998, OIA.28.02.0261. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

64 Carter, Handwritten notes, 30 April 1998, OIA.28.02.0275. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

65 Ministry of Health, "McInroe v Leeks & Attorney General, and [L] v Leeks & Attorney General", 9 June 1998, OIA.28.02.0255. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

66 Carter, "McInroe v Leeks and the Attorney-General; Wanganui High Court; CP 12/94 Our Ref: HEA007/214; [L] v Attorney-General; Wanganui High Court; CP 2/97 Our Ref: HEA007/302", 13 June 1998, OIA.28.02.0249. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

67 Cunningham Facsimile, "Re: Lake Alice Mediation", 17 June 1998, OIA.28.02.0239. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

6.14 The mediation was scheduled for 30 June 1998 in Auckland.[68] Mr Carter kept Grant Liddell (counsel in charge of the Grant Cameron litigation) informed of developments.[69]

6.15 Mr Carter provided the mediator with a statement setting out the Attorney-General's view of the issues on 29 June 1998.[70]

6.16 The mediation was held before Ms Linda Kaye at the Northern Club in Auckland. Present were:

(a) the two plaintiffs, Ms Cunningham and Dr Chambers QC;

(b) Mr Carter and Dr Janice Wilson and David Clarke from the Ministry of Health;

(c) Dr Leeks and Mr Knowsley; and

(d) Dr Leah Andrews as an independent psychiatrist to assist the mediator.

6.17 The mediation failed to result in a settlement. Based on the notes made by Mr Carter, it appears the parties were simply too far apart regarding an appropriate payment by the defendants.[71]

7 Events following mediation/developments with Grant Cameron group of claims

7.1 Following the mediation, the parties corresponded regarding various procedural matters in preparation for trial, including the discovery of further documentation and whether it would be necessary for either of the plaintiffs to undergo psychiatric assessments.[72] (At least from a review of the file, it does not appear that either of those matters was satisfactorily resolved at the time).

7.2 In October 1998, Grant Cameron was continuing to push for an agreed resolution process.[73] But by December that year, Mr Cameron had indicated publicly that he intended to take his clients' claims to court.

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68 Cunningham Facsimile, "Re: Lake Alice Mediation", 17 June 1998, OIA.28.02.0239. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

69 Carter Email, "McInroe v Leeks & AG; [L] v Leeks & AG", 26 June 1998, OIA.28.02.0224. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

70 Carter, "McInroe v Leeks and Attorney-General; Wanganui High Court; CP 12/94 [L] v Attorney-General; Wanganui High Court; CP 2/97 – Mediations", 29 June 1998, OIA.28.020200; Issues Statement on behalf of Second Defendant, OIA.28.02.0202. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

71 Carter, Handwritten notes, OIA.28.02.0136. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

72 Carter, "McInroe v Leeks and the Attorney-General; Wanganui High Court; CP 12/94 Our Ref: HEA007/214; [L] v Attorney-General; Wanganui High Court; CP 2/97 Our Ref: HEA007/302", 8 July 1998, OIA.28.02.0121; Cunningham, "Re: McInroe", 4 August 1998, OIA.28.02.0116. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

73 Carter, Handwritten notes, OIA.28.02.0112. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

7.3 On 22 January 1999, Ms Cunningham wrote to Crown Law attaching praecipe asking the Court to set the McInroe and L proceedings down for trial before a Judge and jury.[74]

7.4 Crown Law was, at this time, in the process of providing advice to the Ministry of Health on the pros and cons of dealing with the Grant Cameron group of claims by way of litigation or alternative dispute resolution.[75] By email dated 3 February 1999, Mr Carter provided Grant Liddell with comments on the draft advice and emphasised the importance of treating the McInroe and L claims consistently "to avoid the undesirable possibility of different and possibly conflicting outcomes being arrived at in respect of the 2 sets of claims."[76]

7.5 On 23 February 1999, Mr Liddell advised then Solicitor-General John McGrath QC of a decision by Ministers that an ad hoc alternative dispute resolution process should not be constructed to process the Grant Cameron group of claims.[77] The claims would instead be allowed to progress to litigation. This position was formally communicated to Mr Cameron by letter dated 2 March 1999.[78]

(a) Dispute regarding mode of trial

7.6 On 26 February 1999, Ms Cunningham wrote to Mr Carter noting that counsel for Dr Leeks (Mr Knowsley) wished to oppose the plaintiffs' proposal for a jury trial and proposed the matter be transferred to Wellington by consent.[79]

7.7 Ms Cunningham followed up with Mr Carter by facsimile dated 22 March 1999.[80] Mr Carter's notes record that he rang Ms Cunningham that day and advised he would be responding shortly following absences over the preceding four weeks.[81] On 8 April 1999, Mr Carter wrote to Ms Cunningham enclosing a signed memorandum consenting to the McInroe and L proceedings being transferred to the Wellington High Court.[82]

7.8 The proceedings were formally transferred to Wellington High Court by order of Master Thomson on 28 April 1999.[83]

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74 Cunningham, "Your Client: Dr Leeks – [L] & McInroe Proceedings", 22 January 1999, OIA.28.02.0075; Praecipe to set proceeding down for trial, 22 January 1999, OIA.28.05.0422. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

75 Rebecca Ellis and Grant Liddell, "Lake Alice Claims", 4 February 1999, OIA.28.02.0036. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

76 Carter, "Lake Alice", 3 February 1999, OIA.28.02.0063. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

77 Liddell, "Lake Alice: HEA 007/306: for information", OIA.28.02.0017. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

78 Liddell, "Lake Alice", 2 March 1999, OIA.28.03.0612. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

79 Cunningham, "Your Client The Attorney General [L] and McInroe Proceeding", 26 February 1999, OIA.28.03.0637. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

80 Cunningham Facsimile, "Re: [L] and McInroe Proceedings", 22 March 1999, OIA.28.03.0599. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

81 Carter, Handwritten Notes, OIA.28.03.0602. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

82 Carter, "McInroe v Leeks and the Attorney-General; Wanganui High Court; CP 12/94 Our Ref: HEA007/214; [L] v Attorney-General; Wanganui High Court; CP 2/97 Our Ref: HEA007/302", 8 April 1999, OIA.28.03.0595; Memorandum of Consent, OIA.28.05.0425. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

83 High Court/District Court Wanganui, "CP 12/94 – McInroe v Leeks & Anor", 3 May 1999, OIA.28.03.0583. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

7.9 On 12 May 1999, counsel for Dr Leeks applied for an order that the proceedings be heard before a Judge alone.[84] The application was initially scheduled for call on 24 May 1999, but was adjourned with the consent of all parties.[85] Among other reasons, senior counsel for Ms McInroe (Dr Chambers QC) had recently been appointed to the High Court bench.

7.10 After a further adjournment (also by consent),[86] the application was heard by Durie J on 30 June 1999. Counsel for the Attorney-General (Mr Carter) made submissions in support of the application.

7.11 On 4 August 1999, Durie J issued a reserved judgment ordering the proceedings be heard by a Judge sitting alone.[87] His Honour was persuaded that the trial would involve difficult questions of law and an investigation in which difficult questions in relation to scientific, technical or professional matters were likely to arise, which together made the matter unsuitable for trial by jury.

7.12 The plaintiffs lodged a notice of motion to appeal on 30 August 1999.[88]

7.13 The plaintiffs also applied for a waiver of the requirement to pay security for costs. The Attorney-General did not oppose this application, but Dr Leeks did.[89] The matter was heard by Penlington J on 27 September 1999. His Honour waived security for Mr L, but required Ms McInroe to give an irrevocable authorisation for the deduction of $10 per week from her Domestic Purposes Benefit in the event of costs being awarded against her.[90]

7.14 The parties subsequently liaised on the contents of the case on appeal (the bundle of documents provided to the Court of Appeal) and counsel for the plaintiffs served a second amended statement of claim in the McInroe proceeding in February 2000.[91]

7.15 The plaintiffs served the case on appeal under cover of letter dated 23 February 2000.[92] The appeal was subsequently set down to be heard on 17 May 2000.[93]

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84 "Notice of application for oder [sic] for Judge alone trial pursuant to section 19A(5) Judicature Act", 12 May 1999, OIA.28.03.0574. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

85 Rainey Collins Wright & Co Facsimile, "Message: CP 116 & 117/99 [L] & McInroe v Leeks & A-G Application Pursuant to S19A(5) Judicature Act", 21 May 1999, OIA.28.03.0576. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

86 Carter, "McInroe v Leeks and the Attorney-General; Wellington High Court; CP 117/99 [L] v Leeks & Attorney-General; Wellington High Court; CP 116/99 Our Ref: HEA007/214 & HEA007/302", 18 June 1999, OIA.28.03.0553. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

87 [L] *v Leeks* Unreported High Court, Wanganui, CP116/99 and CP116/99, 4 August 1999.

88 Cunningham, "McInroe v Leeks and the Attorney General [L] v Leeks and the Attorney General", 30 August 1999, OIA.28.03.0521. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

89 Garth Stanish, File Note, "McInroe v Attorney-General", 27 September 1999, OIA.28.03.0479. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

90 *McInroe v Leeks* Unreported High Court, Wellington, CPP117/99 and CP116/99, 27 September 1999.

91 Cunningham, "McInroe and [L] v Leeks & Anor", 2 February 2000, OIA.28.03.0450; Second Amended Statement of Claim, OIA.28.03.0452. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

92 Cunningham, "CA 219/99 – Leoni Frances McInroe & Ano v Selwyn Leeks", 23 February 2000, OIA.28.03.0435. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

93 Department for Courts, "Notice of Fixture CA217/99 McInroe and [L] v Selwyn Leeks and The Attorney-General", 1 March 2000, OIA.28.03.0427. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

7.16 On 16 May 2000, Crown Law filed and served the Attorney-General's statement of defence to Ms McInroe's second amended statement of claim.[94]

7.17 The plaintiffs' appeal was heard by the Court of Appeal on 17 May 2000. The Court of Appeal issued a judgment upholding Durie J's judgment (on slightly different grounds) and dismissing the appeal on 31 May 2000.[95]

8 Handover of file to the Public Commercial Team

8.1 Also on 31 May 2000, Mr Carter wrote to the Ministry of Health advising of the result of the appeal and that the files relating to the McInroe and L proceedings would be transferred to Grant Liddell and Rebecca Ellis (now her Honour Justice Ellis) of the Public Commercial team "so that one team deals with all the claims relating to the Lake Alice Adolescent Unit."[96]

8.2 On 27 June 2000, Mr Carter wrote a detailed memorandum to Mr Liddell and Ms Ellis handing over the files.[97] Mr Carter's memorandum detailed the status of the McInroe and L proceedings at that time, settlement discussions undertaken to date, the state of discovery and the next steps required.

8.3 In particular:

(a) Mr Carter reiterated the importance of consistency between the McInroe and L claims on the one hand and the Grant Cameron claims on the other (at paragraph [6]).

(b) Mr Carter suggested a cross claim should be filed by the Attorney-General against Dr Leeks on the basis that his conduct, if proven, was outside the terms of his employment (at paragraphs [16] and [17]).

(c) Mr Carter did not consider the discovery provided by the Crown to date was complete (at paragraphs [18] to [24]).

(d) Mr Carter stated that, once experts for the Attorney-General had been finalised, it would be necessary to consider whether those experts should conduct a psychiatric evaluation of the plaintiffs. Mr Carter outlined his understanding that part of Ms McInroe's case was the assertion that she has never suffered from psychiatric illness and should never have been placed at Lake Alice (at paragraph [36]).

(e) Mr Carter indicated that witness briefing had yet to be completed at that stage (at paragraph [38]).

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94 Carter, "McInroe v Leeks and the Attorney-General; Wellington High Court; CP 117/99 [L] v Leeks & Attorney-General; Wellington High Court; CP 116/99 Our Ref: HEA007/214 & HEA007/302", 16 May 2000, OIA.28.03.0355; Second Defendant's Statement of Defence to (February 2000) Amended Statement of Claim, OIA.29.04.0022. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

95 *McInroe v Leeks* [2000] 2 NZLR 721, (2000) 14 PRNZ 164.

96 Carter, "McInroe v Leeks and the Attorney-General; Wellington High Court; CP 117/99 [L] v Leeks & Attorney-General; Wellington High Court; CP 116/99 McInroe & [L] v Leeks & Attorney-General; Court of Appeal; CA 217/99 Our Ref: HEA007/214 & HEA007/302", 31 May 2000, OIA.28.03.0337. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

97 Carter Memorandum, "McInroe v Leeks and the Attorney-General; Wellington High Court; CP 117/99 [L] v Leeks & Attorney-General; Wellington High Court; CP 116/99 McInroe & [L] v Leeks & Attorney-General; Court of Appeal; CA 217/99 HEA007/214 (McInroe); HEA007/302 ([L])", 27 June 2000, OIA.28.03.0325. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

9 Matters progress towards trial

9.1 On 20 October 2000, Ms Cunningham wrote to Crown Law enclosing a third amended statement of claim on behalf of Ms McInroe and a praecipe to set the matter down for trial.[98] On 20 December 2000, Ms Cunningham wrote to Crown Law enclosing an application for pre-trial directions, including an application that the McInroe and L proceedings be consolidated.[99]

9.2 The following day, Ms Cunningham wrote to Crown Law regarding a report in the Sunday Star Times indicating that the Government intended to mediate or arbitrate with some 110 former Lake Alice patients with a view to settling their claims.[100] Ms Cunningham asked whether, in view of the Crown's position regarding this group of claimants, the Attorney-General wished to pursue a settlement with Ms McInroe and Mr L.

9.3 On 24 January 2001, Crown Law filed the Attorney-General's statement of defence to Ms McInroe's third statement of claim.[101] In his letter serving the statement of defence on Ms Cunningham, Mr Liddell stated that he was planning to discuss with Ms Cunningham her clients' interlocutory applications and other matters relating to the disposition of the proceedings.[102]

9.4 On 31 January 2001, Crown Law received a report from the Investigation Bureau which it had instructed to carry out investigations for the purposes of the various Lake Alice claims.[103] The report attached draft statements for five former staff members at Lake Alice.

9.5 On 21 February 2001, Mr Liddell emailed Ms Cunningham advising that the Crown would consent to the L and McInroe proceedings being consolidated and the majority of the pre-trial directions.[104] Mr Liddell advised that applications for independent medical evaluation of the plaintiffs under s 100 of the Judicature Act 1908 would be filed shortly, and apologised for the delay in making available for inspection additional documents discovered by the Crown. The following day, Mr Liddell responded to Ms Cunningham's letter of 21 December 2000 stating that Ms McInroe and Mr L had already explored settlement by way of mediation but that process had been unsuccessful.[105]

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98 Cunningham, "McInroe & [L] v Leeks & The Attorney General", 20 October 2000, OIA.28.03.0323. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

99 Cunningham, "McInroe & [L] v Leeks & The Attorney General", 20 December 2000, OIA.28.03.0321. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

100 Cunningham, "McInroe v Leeks & Attorney-General – CP 117/99 – Wellington High Court [L] v Leeks & Attorney-General – CP 116/99 – Wellington High Court", 21 December 2000, OIA.28.03.0313. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

101 Liddell, "McInroe v Leeks and Attorney-General – CP 117/99, Our Ref: HEA007/214 [L] v Leeks and Attorney-General – CP 116/99, Our Ref: HEA007/302", 24 January 2001, OIA.28.03.0295. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

102 Liddell, "McInroe v Leeks and Attorney-General – CP 117/99, Our Ref: HEA007/214 [L] v Leeks and Attorney-General – CP 116/99, Our Ref: HEA007/302", 24 January 2001, OIA.28.03.0297. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

103 The Investigation Bureau, "Re: Lake Alice Claims", 31 January 2001, OIA.29.02.0393. HEA007/214 [L] v Leeks and Attorney-General – CP 116/99, Our Ref: HEA007/302", 24 January 2001, OIA.28.03.0297. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

104 Liddell Email, "[L] and McInroe cases: HEA007/214 and 302", 21 February 2001, OIA28.03.0257. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

105 Liddell, "McInroe v Leeks and Attorney-General – CP 117/99, Our Ref: HEA007/214 [L] v Leeks and Attorney-General – CP 116/99, Our Ref: HEA007/302", 22 February 2001, OIA.28.03.0247. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

9.6 On 23 February 2001, Ms Cunningham wrote to Crown Law expressing her disappointment that the Crown was pursuing further interlocutory applications and had discovered further documents of relevance to the plaintiffs.[106] The hearing of the plaintiffs' application for pre-trial directions (scheduled for 27 February 2001) was adjourned for six weeks by consent.[107]

10 Requirement for independent medical examination

10.1 Also on 23 February 2001, Mr Liddell faxed Ms Cunningham draft applications requiring the plaintiffs to submit to independent medical evaluation.[108] Mr Liddell also emailed Ms Cunningham setting out the proposed dates for the examinations and advising that both examinations were proposed to be at the Mason Clinic in Auckland, but that if there were other more suitable venues he could discuss them with the examiner.[109]

10.2 Formal applications were filed on 3 April 2001.[110] That day, Ms Cunningham advised that Ms McInroe would consent to a psychiatric evaluation.[111] An order requiring Ms McInroe to submit herself for medical examination was made by consent on 10 April 2001.[112]

10.3 The examination was conducted on 24 April 2001 at the Mason Clinic in Auckland. The medical examiner was Dr P Brinded and Ms McInroe was supported by Dr Louise Armstrong (psychiatrist).

10.4 A record of a telephone call with Dr Brinded after the examination indicates that Ms McInroe found it particularly difficult attending the Mason Clinic, which is a secure facility providing forensic mental health services, in light of her experiences at Lake Alice.[113]

10.5 Dr Brinded's report of the evaluation was submitted to Crown Law on 5 June 2001.[114]

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106 Cunningham Facsimile, "Re: McInroe & [L]", 23 February 2001, OIA.28.03.0213. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

107 Chapman email, "McInroe and [L] callover – 27 February 2001", 27 February 2001, OIA.28.03.0206. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

108 Liddell Facsimile, "[L] v Leeks and Attorney-General & McInroe v Leeks and Attorney-General", 23 February 2001, OIA.28.03.0216; Notice of second defendant's interlocutory application for order under: section 100 of the Judicature Act 1908", OIA.28.03.0217. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

109 Liddell Email, "[L], McInroe cases: HEA007/214 , 302 and 306", 23 February 2001, OIA.28.03.0225. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

110 Liddell Email, "McInroe and [L]: HEA007/214, 302, 306", 3 April 2001, OIA.28.03.0194. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

111 Cunningham Facsimile, "Re: McInroe and [L] – Lake Alice Hospital proceeding", 3 April 2001, OIA.28.03.0184. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

112 Liddell Email, "Lake Alice and McInroe and [L]: HEA007/214, 302 and 306", 10 April 2001, OIA.28.03.0128. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

113 Julie Grant Email, "HEA007/306 – telephone conversation with Dr Brinded Thursday 3 May 2001", 3 May 2001, OIA.28.03.0042. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

114 Brinded, "Re: McInroe vs Leeks Your Ref: HEA007/214, 302 and 306", 5 June 2001, OIA.28.04.0417. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

11 Review of Ms McInroe's patient files

11.1 On 7 March 2001, Mr Liddell wrote to Dr Garry Walter asking him to review Ms McInroe's and Mr L's patient files and asking him to give his expert opinion on various questions of relevance to the proceedings.[115]

11.2 Dr Walter provided his initial report on 5 April 2001,[116] with a new version following comments from Crown Law and a review of further literature on 12 April 2001.[117]

12 Cross claim by the Attorney-General against Dr Leeks

12.1 As suggested by Mr Carter in his handover memorandum,[118] the Attorney-General filed and served a notice and statement of claim seeking contribution and indemnity from Dr Leeks on 5 June 2001.[119]

12.2 On 27 June 2001,[120] counsel for Dr Leeks served Crown Law with a draft statement of claim seeking an indemnity from the Attorney-General on the basis that Dr Leeks was at all times acting in the course of his employment. A final version was served on Crown Law by letter dated 3 July 2001.[121]

13 Further discovery and agreement to pre-trial directions

13.1 During this same period, the parties continued to liaise about the discovery of documents. On 3 April 2001, Ms Cunningham wrote to Crown Law and requested a further adjournment of the hearing of outstanding pre-trial applications to allow the completion of further enquiries arising from her inspection of additional documents discovered by the Crown.[122] An adjournment was granted by consent until 5 June 2001.[123]

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115 Liddell, "Your Review of Files Concerning McInroe and [L] Our Ref: HEA007/214, 302 and 306", 7 March 2001, OIA.29.02.0003. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

116 Walter, 5 April 2001, OIA.28.03.0173. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

117 Walter, 12 April 2001, OIA.28.03.0107. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

118 Carter Memorandum, "McInroe v Leeks and the Attorney-General; Wellington High Court; CP 117/99 [L] v Leeks & Attorney-General; Wellington High Court; CP 116/99 McInroe & [L] v Leeks & Attorney-General; Court of Appeal; CA 217/99 HEA007/214 (McInroe); HEA007/302 ([L])", 27 June 2000, OIA.28.03.0325, at [16] and [17]. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

119 Liddell, "McInroe v Leeks & Attorney-General CP117/99 Our Ref: HEA007/214", 5 June 2001, OIA.28.04.0453. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

120 Knowsley, "McInroe & [L] v Leeks & The Attorney General", 27 June 2001, OIA.28.04.0407. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

121 Knowsley, "McInroe & [L] v Leeks & The Attorney General", 3 July 2001, OIA.28.04.0401; Statement of Claim (under Rule 163) by First Defendant against Second Defendant for Contirbution [sic] and Indemnity", 4 July 2001, OIA.29.01.0355. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

122 Cunningham Facsimile, "Re: McInroe and [L] – Lake Alice Hospital proceeding", 3 April 2001, OIA.28.03.0184. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

123 Liddell Email, "Lake Alice and McInroe and [L]: HEA007/214, 302 and 306", 10 April 2001, OIA.28.03.0128. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

13.2 On 17 May 2001, Mr Liddell responded to Ms Cunningham's queries arising from her inspection of documents and attached a revised draft supplementary list of documents.[124]

13.3 On 1 June 2001, Crown Law received a further report from The Investigation Bureau attaching draft witness statements from two more former Lake Alice staff members.[125]

13.4 On 5 June 2001, the plaintiffs' application for consolidation and pre-trial directions was granted by consent.[126]

13.5 After being served with the Attorney-General's claim against Dr Leeks that day, Mr Knowsley asked Mr Liddell whether Ms McInroe and Mr L could participate in the settlement process for the Grant Cameron claims.[127]

13.6 Mr Liddell subsequently raised the matter with the Ministry of Health, but indicated he did not see the suggestion as practical and suggested that if there were to be settlement discussions they should occur after the deal for the Grant Cameron claims was out of the public domain.[128] He also indicated that if the McInroe and L discussions followed publicity concerning the Grant Cameron claims, Ms Cunningham may be more inclined to accept more realistic settlement sums.

13.7 Nevertheless, on 11 June 2001 Mr Liddell rang Ms Cunningham to suggest she may wish to speak to Mr Cameron about the issue.[129]

13.8 On 14 June 2001, Mr Liddell provided Ms Cunningham with the Crown's supplementary list of documents.[130]

14 Progress towards settlement

14.1 On 27 June 2001, Crown Law (Hamish Hancock) wrote to Ailsa Duffy QC (by then senior counsel for Ms McInroe and Ms L; and now her Honour Justice Duffy) on a without prejudice basis to advise that the Grant Cameron group of claimants was close to settling their claims with the Crown and indicate that the Crown was prepared to establish a parallel arrangement for the McInroe and L claims.[131]

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124 Liddell, "McInroe v Leeks and Attorney-General [L] v Leeks and Attorney-General Our Ref: HEA007/214, 302 and 306", 17 May 2001, OIA.28.03.0021. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

125 The Investigation Bureau, "Re: Lake Alice Claims", 30 May 2001, OIA.28.03.0003. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

126 Liddell Email, "Lake Alice, McInroe and [L]: HEA007/214, 302 and 306 – chambers list before Master Thomson ", 5 June 2001, OIA.28.04.0448. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

127 Ibid.

128 Liddell Email, "McInroe and [L]: whether and how to settle", 5 June 2001, OIA.28.04.0447. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

129 Liddell Email, "t/c with P Cunningham: HEA007/214, 302 and 306", 11 June 2001, OIA.28.04.0430. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

130 Liddell, "McInroe v Leeks & Attorney-General CP117/99", 14 June 2001, OIA.28.04.0440. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

131 Hancock, "McInroe & [L] Our Ref: HEA007/214", 27 June 2001, OIA.28.04.0414. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

14.2 Ms Duffy replied on 17 July 2001 advising that her clients were interested in exploring a parallel arrangement of the kind suggested.[132] Ms Duffy went on to outline her concerns with the Crown's conduct of the case to date, which she indicated had added significantly to the plaintiffs' costs, and asked for an indication of the pool of money available for allocation to her clients so that she could assess the respective benefits of the parallel process and continuing with the litigation. Ms Duffy also indicated that the plaintiffs would not want to forego their right to proceed against Dr Leeks without some recognition being given to this loss in the settlement payment.

14.3 On 15 August 2001, Ms Cunningham wrote to Mr Liddell indicating that in light of the correspondence between Mr Hancock and Ms Duffy she did not propose to attend to inspection of the Crown's additional documents or arrange for Mr L's rescheduled medical evaluation to be completed at that time.[133] Mr Liddell replied to Ms Cunningham on 24 August 2001 stating that while the Crown remained willing to attempt to settle, there was no guarantee that would be successful, the Grant Cameron claims were still to be resolved, and it was necessary to continue to prepare for trial.[134]

14.4 The proceeding was tentatively set down for hearing on 22 April 2002.[135]

14.5 On 21 September 2001, Ms Cunningham wrote to Mr Liddell expressing indignation at the difference in treatment afforded to Ms McInroe and Mr L in comparison with the Grant Cameron claimants.[136] Ms Cunningham requested an urgent meeting with the Solicitor-General and the prompt adoption of a parallel process to the "Cameron model", failing which Ms Cunningham indicated there would be a direct approach to the Attorney-General.

14.6 Mr Liddell replied on 28 September 2001 advising that the Crown would soon be in a position to put a concrete proposal to Ms McInroe and Mr L – in broad terms involving a process whereby an expert determinator would allocate sums from a pool of funds designated for the purpose.[137] Mr Liddell noted Ms Cunningham's criticisms, stating that while he did not accept them he saw little point in disputing them at that time.

14.7 Ms Cunningham responded on 12 October 2001, again emphasising the impact of the litigation process on her clients and indicating that in the absence of a settlement her clients would be seeking increased damages in light of "the Crown's aggravating conduct in pursuing litigation in circumstances where it has settled with others."[138]

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132 Duffy, "McInroe and [L]", 19 July 2001, OIA.28.04.0399. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

133 Cunningham, "McInroe & [L] – Your Client: The Attorney General", 15 August 2001, OIA.28.04.0394. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

134 Liddell, "[L] and McInroe Our Ref: HEA007/214, 302 and 306", 24 August 2001, OIA.28.04.0385. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

135 White, "McInroe v Leeks & The Attorney General – CP117/99 [L] v Leeks & The Attorney General – CP116/99 Our Ref: HEA007/302 and HEA007/214", 19 September 2001, OIA.28.04.0379. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

136 Cunningham, "[L] and McInroe – Claim against Dr Leeks and the Attorney General", 21 September 2001, OIA.28.04.0371. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

137 Liddell, "McInroe v Leeks & Attorney-General; [L] v Leeks & Attorney-General Our Ref: HEA007/306", 28 September 2001, OIA.28.04.0370. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

138 Cunningham, "Re: McInroe & [L]", 12 October 2001, OIA.28.04.0365. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

14.8 On 17 October 2001, counsel for Dr Leeks (Mr Knowsley) wrote to Mr Liddell advising that he had received a letter from Ms Cunningham indicating that the plaintiffs intended proceeding against Dr Leeks despite the possibility they may settle with the Crown.[139] Mr Knowsley stated that it would seem sensible for any settlement to include Dr Leeks observing that, if the settlement did not cover all parties, his client's claim for indemnity against the Crown would need to be heard as part of Dr Leeks' defence.

14.9 On 18 October 2001, Mr Liddell wrote to Ms Cunningham outlining the broad parameters of the process proposed for the determination of her clients' claims.[140] Ms Cunningham replied on 2 November 2001, reiterating her concerns about the conduct of the litigation to that point and suggesting that a preferable way forward was for the Crown to reach agreement with Dr Leeks as to an appropriate settlement offer and presenting it to the plaintiffs.[141]

14.10 Mr Liddell and Christine Lloyd from the Ministry of Health then met with Ailsa Duffy QC and Philippa Cunningham to discuss settlement on 20 November 2001.[142]

15 Settlement achieved

15.1 After some additional correspondence, Mr Liddell sent a formal offer of settlement to Ms Duffy QC and Ms Cunningham on 15 February 2002.[143] The proposed settlements involved payments to Ms McInroe and Mr L, the payment of legal costs incurred to date, and the provision of a formal written apology in exchange for the discontinuance of the proceedings against both defendants.

15.2 On 21 February 2002, Ms Cunningham advised that Mr L would accept the Crown's offer. Ms Cunningham advised that Ms McInroe also sought a contribution from Dr Leeks and an apology for the conduct of the litigation from the Crown.[144]

15.3 The Crown sought a contribution to the settlement by Dr Leeks,[145] but although Dr Leeks was prepared to discontinue his cross claim against the Crown in response to settlement, he was not prepared to contribute financially.[146] Mr

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139 Knowsley, "McInroe & [L] v Leeks & The Attorney General", 17 October 2001, OIA.28.04.0362. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

140 Liddell, "McInroe & [L] v Leeks & Attorney-General Our Ref: HEA007/214, 302, 306", 18 October 2001, OIA.28.04.0360. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

141 Cunningham, "McInroe and [L] v Leeks and the Attorney General", 2 November 2001, OIA.28.04.0351. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

142 Liddell, "[L] and McInroe v Leeks & Attorney General Our Ref: HEA007/214, 302 and 306", 16 November 2001, OIA.28.04.0357. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

143 Liddell, "McInroe and [L] Settlement Discussions Our Ref: HEA007/214, 302 and 306", 15 February 2002, OIA.28.04.0268. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

144 Liddell Email, "Re: McInroe and [L]", 21 February 2001, OIA.28.04.0266; Cunningham, "Leoni McInroe", 26 February 2002, OIA.28.04.0257. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

145 Liddell File Note, "McInroe and [L] – Telephone conversation with Alan Knowsley 22 February 2002", 22 February 2002, OIA.28.04.0261. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

146 Knowsley, "McInroe & [L] v Leeks & The Attorney General Your Ref: HEA007/214, 302, 306", 12 April 2002, OIA.28.04.0230. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

Liddell then gave consideration to the possibility of settling separately from Dr Leeks and raised this with Ms Cunningham.[147]

15.4 In reply, Ms Cunningham indicated that if the Crown could slightly raise its settlement offer Ms McInroe may be willing to settle with the Crown and decide not to proceed against Dr Leeks.[148]

15.5 Mr Liddell sent a revised settlement offer to Ms Cunningham on 16 May 2002.[149] This offer was (conditionally) accepted the following day.[150]

15.6 A deed of settlement was executed,[151] and the proceeding was formally discontinued on 15 July 2002.[152]

15.7 As part of the settlement, Ms McInroe received an apology from the Prime Minister (Rt Hon Helen Clark) and Minister of Health (Hon Annette King).

15.8 Ms McInroe also received an apology from Crown Law (Grant Liddell) "for avoidable delays in progressing her case."[153]

147 Liddell, "McInroe v Leeks and Attorney-General Our Ref: HEA007/214, HEA007/302 and HEA007/306", 9 April 2002, OIA.28.04.0235. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

148 Cunningham Facsimile, "Re: McInroe", 11 April 2002, OIA.28.04.0231. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

149 Liddell, "McInroe v Leeks and Attorney-General Our Ref: HEA007/214, 302, 306", 16 May 2002, OIA.28.04.0179. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

150 Cunningham Facsimile, "Re: McInroe v Leeks and A-G", 17 June 2002, OIA.28.04.0120. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

151 Deed of Settlement dated 1 July 2002, OIA.28.04.0002. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

152 Cunningham, "CP 117/99 McInroe v. Leeks & The Attorney General", 15 July 2002, OIA.28.04.0062. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

153 Liddell, "Leoni McInroe Our Ref: HEA007/306", OIA.09.03.0297. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

APPENDIX B – GRANT CAMERON LITIGATION

1 Initial negotiations to establish an inquiry

1.1 On 4 July 1997, GRO-C wrote to Hon Paul East, the then Attorney-General, on behalf of a number of former Lake Alice patients requesting a Commission of Inquiry be established to investigate their claims.[1] GRO-C indicated the project was being jointly managed by himself and Grant Cameron Associates (**GCA**), who had instructed John Billington QC and Elizabeth Hird, Barrister.

1.2 The claims were the subject of a 20/20 documentary and received significant media attention. Then Minister of Health Hon Bill English subsequently made a number of comments in the media indicating concern and identifying a need for further investigation.

1.3 On 25 July 1997, the Ministry of Health briefed Hon Bill English on GRO-C letter, recommending that the Minister meet with GRO-C to discuss options for investigating the claims.[2]

1.4 On 6 August 1997, Grant Cameron and GRO-C met with Hon Bill English, officials from the Ministry of Health and Crown Law (Grant Liddell) to discuss options for investigating the Lake Alice claims.[3] It was generally agreed that a Commission of Inquiry would be too time consuming and expensive, but an Ombudsman inquiry and a bespoke framework were discussed.

1.5 On 11 August 1997, Grant Cameron wrote to David Clarke at the Ministry of Health regarding the procedural decisions to be made to progress an inquiry, including how evidence would be heard and costs managed.[4]

1.6 On 21 August 1997, Crown Law (Grant Liddell) provided Mr Clarke with a legal risk assessment of the Lake Alice legal claims.[5] Mr Liddell discussed the procedural recommendations in Grant Cameron's 11 August 1997 letter, noting that they risked making the intended inquisitorial process more adversarial in nature.[6] Mr Liddell noted that the evidence gathering in the McInroe and L claims was not yet complete, and so "it is not possible definitively to assess the Ministry's chances of successful defence in each case at this stage...Whether Dr Leeks or other staff indeed did mistreat persons at Lake Alice in the way that they allege will turn very much on the nature of the oral evidence of the plaintiffs, McInroe and [L], Dr Leeks personally and of other witnesses, staff and patients who can testify to what happened at Lake Alice more than 20 years

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1 GRO-C "Lake Alice Claims", 4 July 1997, NLX.78.02.0127. Provided to the Royal Commission in response to NTP 6 on 24 August 2000.

2 Ministry of Health, "Investigation into allegations of abuse by former patients of the Adolescent Unit at Lake Alice Hospital", 25 July 1997, OIA.05.06.0369. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

3 File Note, "Lake Alice Claims", 7 August 1997, OIA.28.01.0015. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

4 Cameron, "Re: Lake Alice" 11 August 1997, OIA.05.06.0310. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

5 Liddell, "Lake Alice Legal Claims – Legal Risk Assessment", 21 August 1997, OIA.05.06.0241. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

6 At [20].

ago".[7] Mr Liddell advised that he considered it unlikely a Court would hold the Crown liable under the New Zealand Bill of Rights Act 1990 for the events that occurred in the 1970s at Lake Alice.[8]

1.7 On 26 August 1997, Grant Cameron wrote to Mr Clarke complaining about an inadequate response to his requests for official information. He wrote a further letter setting out a detailed proposal for fact-finding and mediation regarding the Lake Alice claimants.[9]

2 Information gathering

2.1 On 5 September 1997, representatives from the Ministry of Health, the Children and Young Persons Service, Ministry of Education and Crown Law met to discuss an information strategy (noting that a fact-finding stage would follow).[10] It was agreed that the first step should be to review the file lists from the departments. Consideration would then be given to whether to put all the files in a room, allowing access to counsel for discovery.[11] On 17 November 1997, David Clarke (Ministry of Health) wrote to Stuart Robertson (GCA) outlining the proposed approach to information management, noting that the Department of Social Welfare would require a list of claimants/persons who had authorised GCA to access their information, which would also serve the purpose of facilitating the release of any information GCA's clients were entitled to in terms of the Privacy Act 1993.[12]

2.2 At around this time, Crown Law began receiving affidavits from various GCA clients.

2.3 On 24 November 1997, a telephone conference call was held with Grant Cameron, Ron Paterson, Catherine Coates and David Clarke.[13] Grant Cameron agreed to provide a list of all clients he represented, evidence of his authority to act, a full statement of claim and supporting affidavits from his clients, and an estimate of the costs Mr Cameron would incur if the Crown agreed to hold the proposed inquiry. On 28 January 1998, Dr Janice Wilson (Ministry of Health) wrote to Grant Cameron recounting his commitment to provide this information, and asking him to provide it to David Clarke.[14] Dr Wilson noted the Ministry would be unable to fully brief Ministers on Grant Cameron's proposals until this information had been provided.

2.4 On 3 June 1998, Grant Cameron met with representatives from the Ministry of Health to discuss options for dealing with his clients' grievances.[15] The Ministry

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7 At [23]-[24].

8 At [28]-[29].

9 Letters from Grant Cameron, "Re: Lake Alice", 26 August 1997, OIA.05.06.0264. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

10 File note, "Lake Alice – Meeting with officials regarding information strategy", 5 September 1997, OIA.05.06.0222. Unfortunately, a page is missing from our copy of the File note. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

11 At [19].

12 Clarke, "Lake Alice Claims Information Management Issues", 17 November 1997, OIA.05.06.0163. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

13 See Letter from Dr Janice Wilson (Ministry of Health) to Grant Cameron, "Re: Lake Alice", 28 January 1998, OIA.05.06.0135. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

14 Wilson, "Re: Lake Alice", 28 January 1998, OIA.05.06.0135. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

15 See DRAFT Letter from David Clarke to Grant Cameron, "Re Lake Alice – without prejudice", 5 June 1998, OIA.05.06.0118. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

noted it was accountable under the Public Finance Act 1989 for the proper application of taxpayer funds, and before it could agree to adopt any processes alternative to litigation it must demonstrate a sound basis for doing so. Mr Cameron raised whether the Crown would be prepared to agree to a moratorium on the limitation period to allow the parties to assess whether they are prepared to participate in any process which may be agreed to.

2.5 Crown Law has a draft letter from David Clarke to Grant Cameron following up on the 3 June 1998 meeting.[16] In this letter, Mr Clarke noted that the Ministry of Health would not be in a position to take the process any further until Grant Cameron provided a list of his clients, his authority to act for each client, a statement of his clients' grievances couched in terms of established causes of action, and supporting material from his clients explaining how his clients' experiences may fall within an established cause of action. Mr Clarke further noted that in principle, the Crown may be willing to agree to a moratorium on the limitation period. It is unclear from the file whether this letter was sent or revised.

3 Initial breakdown in negotiations

3.1 In early July 1998, Grant Cameron provided the first volume of claimant statements.[17] The second volume followed on 4 September 1998, alongside an issues paper on *The Children of Lake Alice*.[18] This paper included Mr Cameron's clients' conditions for agreeing to an Ombudsman's Inquiry, including that a decision on an inquiry be made within 14 days.

3.2 On 18 September 1998, David Clarke wrote to Grant Cameron indicating the Ministry of Health could not make a decision on an inquiry within 14 days, but repeated its offer to consider a moratorium on the limitation period in order to protect Mr Cameron's clients' positions.[19]

3.3 Mr Cameron replied on 28 September 1998 recording his view that the Ministry had not substantively progressed the matter and advising that his clients would "now revert to conventional paths and all earlier assurances as to containment and otherwise are withdrawn."[20]

3.4 On 30 September 1998, David Clarke responded to Mr Cameron noting the Ministry of Health remained ready to continue with negotiations in good faith and disputing Mr Cameron's assertion that the Ministry had made no progress.[21]

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16 See DRAFT Letter from David Clarke to Grant Cameron, "Re Lake Alice – without prejudice", 5 June 1998, OIA.05.06.0118. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

17 Grant Cameron, "Children of Lake Alice", 7 July 1998, OIA.30.01.0311. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

18 Grant Cameron, "Lake Alice", 4 September 1998, OIA.30.01.0280; Grant Cameron Associates, "Former Patients of Lake Alice Hospital Child and Adolescent Unit, Materials Requested by the Crown, Volume Two, Client Statements", August 1998, OIA.26.05.0037; Grant Cameron Associates, "The Children of Lake Alice, Issues", September 1998, OIA.26.05.0002. All provided to the Royal Commission in response to NTP 7 on 14 May 2020.

19 David Clarke, "Lake Alice", 18 September 1998, OIA.30.01.0222 (at OIA.30.01.0227). Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

20 Grant Cameron, "Lake Alice", 28 September 1998, OIA.30.01.0251. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

21 David Clarke, "Lake Alice", 30 September 1998, OIA.30.01.0217. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

3.5 Mr Cameron responded on 1 October 1998 taking issue that the Crown had not prepared a "proposal enabling non-litigation resolution" or assessed the issues involved. Mr Cameron indicated he would file proceedings the following week.[22]

3.6 On 6 October 1998, Crown Law responded to Grant Cameron on behalf of the Ministry of Health.[23] Crown Law indicated that the Crown was in the process of comparing the statements provided by Mr Cameron's clients with their personal files. If the personal files supported the statements, there would be no need for a fact-finding procedure. However, if there were gaps, the Crown considered a negotiated fact-finding procedure would be required.

3.7 The following day, Mr Cameron wrote to Crown Law agreeing to meet to settle various issues and noting he would hold off on filing proceedings.[24]

4 Renewed negotiations

4.1 On 8 October 1998, a telephone conference was held between Grant Cameron and representatives from Crown Law and the Ministry of Health to discuss next steps.[25] The Crown's proposal at that time was to assess each of Mr Cameron's clients' cases against all the file material which the Crown held. This material would be made available to Grant Cameron before the Crown completed its assessment of each case. The Crown's assessment would be forwarded to Grant Cameron once completed. Mr Cameron would then match that assessment against his own and advise whether he accepted the Crown's assessment. The assessments were to be in two parts – a factual analysis, and then (if allegations were supportable by the file) an assessment of quantum by way of settlement. Quantum could then be negotiated between the Crown and Grant Cameron. If the Crown considered allegations were not supportable, or an agreement could not be reached on quantum, the case would be put into a separate pool which would be dealt with by some alternative process.

4.2 It was agreed that the information management process of the Ministry needed to be revisited, so that there could be proper coordination between those agencies who held information relating to Mr Cameron's clients. This included adopting a consistent interpretation of the Privacy Act 1993. Crown Law agreed to develop a written protocol concerning information entitlements.

4.3 The implications of Dr Leeks' absence were also discussed. Crown Law agreed that liability assessments would be needed so that the relative contributions of the Crown and Dr Leeks (and possibly other staff members) could be identified.

4.4 Grant Cameron's costs proposals were also discussed. In a follow-up letter to Grant Cameron,[26] Crown Law noted it would need to be able to persuade Ministers that an agreement as to costs was equally in the Crown's interest, and

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22 Grant Cameron, "Lake Alice", 1 October 1998, OIA.30.01.0211. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

23 Grant Liddell, "Lake Alice Claims Our Ref: HEA007/306", 6 October 1998, OIA.30.01.0186. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

24 Grant Cameron, "Lake Alice Claims Your Ref: HEA007/306", 7 October 1998, OIA.30.01.0177. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

25 See Letter from Grant Liddell to David Clarke, "Lake Alice Claims", 13 October 1998, OIA.30.01.0157; and Letter from Grant Liddell to Grant Cameron, "Lake Alice Claims", 13 October 1998, OIA.30.01.0162. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

26 Letter from Grant Liddell to Grant Cameron, "Lake Alice Claims", 13 October 1998, OIA.30.01.0162 at [14]. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

in particular would need to be persuaded why costs ought not to be determined on the same basis that they would be if the matter went to court.

4.5 In a follow-up letter to the Ministry on 13 October 1998,[27] Crown Law noted that, in light of developments that had occurred in discussions with Grant Cameron and his colleagues, it was likely the Ombudsman option would not progress. Crown Law further noted that terms of reference needed to be determined and agreed whether or not the Office of the Ombudsmen was used or some other process was adopted.

4.6 Later that day the parties met to discuss these matters. It was agreed that Grant Cameron would provide a draft Heads of Agreement. This was provided on 30 October 1998, but GCA suggested it ought not be signed until agreement could be reached on a to-be-drafted Arbitration Agreement.[28] GCA undertook to draft an Arbitration Agreement, and forward a proposal on costs and its suggestions as to an arbitrator. On 4 December 1998, Grant Cameron provided a redrafted Heads of Agreement and Arbitration Agreement.[29]

5 Problems getting Cabinet Paper through

5.1 On 9 December 1998, Grant Liddell telephoned Prue Richardson (GCA) to advise that it was unlikely that a Cabinet paper proposing to give the Minister of Health authority to approve an ADR process along the lines being negotiated between Crown Law and GCA would be before Cabinet at its last meeting for 1998 on 18 December. This was because the Treasury had indicated that the "technical" defences which, for the purposes of the alternative dispute resolution process were proposed to be put to one side, should not necessarily be waived, as doing so was likely to increase the likely quantum of compensation that the Crown would face. Crown Law considered it was preferable that the issue be resolved between officials before the paper was submitted to Cabinet. It was anticipated the paper could go up to Cabinet early in the New Year.

5.2 Crown Law considered, however, that discovery and negotiation with a view to settlement, if appropriate, could proceed in the absence of or in anticipation of any Cabinet approval, given that such processes would occur as a matter of course if the cases proceeded in the High Court. Crown Law proposed to begin sending material down that week. The phone call was summarised in a letter the same day.[30]

5.3 On 10 December 1998, Grant Cameron requested that a proposal go to Cabinet on 18 December, stating that "further delay is not acceptable and the position will need to be finalised now".[31] He suggested a "fiscal envelope" for the settlements could address the Treasury's concerns.

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27 Letter from Grant Liddell to David Clarke, "Lake Alice Claims", 13 October 1998, OIA.30.01.0157. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

28 Grant Cameron, "Lake Alice", 30 October 1998, OIA.30.01.0139. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

29 Grant Cameron, "Lake Alice – Your Ref – HEA007/306", 4 December 1998, OIA.30.01.0032. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

30 Letter from Grant Liddell to Grant Cameron Associates, "Lake Alice Claims Our Ref: HEA007/306", 9 December 1998, OIA.30.01.0009. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

31 Grant Cameron, "Lake Alice", 10 December 1998, OIA.06.01.0406. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

5.4 On 11 December 1998, Crown Law replied to Grant Cameron's letter indicating a paper could go to Cabinet in late January-early February.[32] Proper process required consultation with affected departments, including Social Welfare, Education, the Department of the Prime Minister and Cabinet, and the Treasury. GCA responded the following day that it would file proceedings if no agreement was reached by Christmas.[33]

5.5 On 14 December 1998, Crown Law wrote to Grant Cameron indicating that, if proceedings were filed, its focus would inevitably shift to responding to those proceedings.[34] The following day, Grant Cameron wrote to Crown Law committing to filing proceedings.[35]

5.6 On 18 December 1998, articles about the imminent filing of the Lake Alice claim were published in the media. At this point, no proceedings had been filed.

5.7 On 27 January 1999, David Clarke wrote to Grant Cameron acknowledging receipt of a list of 48 names of people who may form part of his client group.[36] Mr Clarke had been advised by medical records staff that they would not be able to locate and provide files without further identifying information, such as dates of birth and the former addresses of the claimants. Mr Clarke further noted he had recently re-established contact with the Police in an attempt to locate Police records relating to Lake Alice. Previous attempts had been unsuccessful, as the Police advised that the majority of their files were destroyed after five years. Mr Clarke asked the Police to double-check their files, and noted the Police would be assisted if Grant Cameron could advise whether any or all of his clients made any complaints to the Police in respect of their alleged mistreatment at Lake Alice and if such a complaint was made, when it was made and at what police station.

5.8 On 2 February 1999, the Rt Hon Wyatt Creech, then the Deputy Prime Minister, took over from Hon Bill English as Minister of Health.

5.9 That same day, Grant Liddell spoke with John Billington QC regarding progress on the Lake Alice file.[37] The Cabinet paper was on track and was expected to go before Cabinet in the next few weeks. Crown Law had not received any correspondence from Grant Cameron, nor seen any evidence of any proceedings. Mr Billington indicated that Mr Cameron was acting on his advice to give Crown Law a reasonable time to allow matters to progress.

6 Advice to the Minister

6.1 On 4 February 1999, Crown Law advised the Ministry of Health on the advantages and disadvantages of the Crown pursuing the Lake Alice claims to

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32 Grant Liddell, "Lake Alice: process for Cabinet approval Our Ref: HEA007/306", 11 December 1998, OIA.06.01.0415. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

33 Grant Cameron, "Lake Alice Claims Your Ref: HEA007/306", 12 December 1998, OIA.06.01.0397. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

34 Grant Liddell, "Lake Alice Claims Our Ref: HEA007/306", 14 December 1998, OIA.06.01.0386. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

35 Grant Cameron, "Lake Alice Claims Your Ref: HEA007/306", 15 December 1998, OIA.06.01.0358. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

36 Letter from David Clarke to Grant Cameron, "Lake Alice", 27 January 1999, OIA.06.01.0266. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

37 File note, Grant Liddell, "Telephone conversation with John Billington", 2 February 1999, OIA.06.01.0257. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

litigation, as opposed to embarking on an ADR process.[38] Crown Law noted that there were unlikely to be significant cost savings in ADR – either approach would require the exchange of information and no less preparation would be required.[39] Any negotiated settlement would, in each case, depend on the degree to which the Crown's documents would corroborate the claimants' statements, and what legal implications the respective lawyers would draw from the facts.[40] Crown Law noted the political dimension of the decision whether to litigate or to pursue ADR.[41] Crown Law further noted that, if the Ministry considered there was a real prospect of other such claims in "the mental health arena", that would be a factor strongly militating against the use of the courts for resolving the Lake Alice claims.[42] The key question was whether Ministers wished the claims to be dealt with on their merits: "If Ministers want the Crown to respond to the claims, an appropriate ADR mode is preferable because it will avoid any precedential effect, and the Crown may be able to manage publicity impacts, if that is wanted. If Ministers want to resist the claim at all costs, and seek to defeat them by whatever means, they should litigate."[43]

6.2 On 12 February 1999,[44] Gillian Durham, the Deputy Director-General of the Safety and Regulation Branch, provided a briefing to the Minister of Health on the Lake Alice claims; advising of the choices open to Government in responding to the claims and the timeframe for a Government decision; and recommending that he meet, as early as possible, with the Ministers of Social Welfare and Finance and the Treasurer to agree on what response to recommend to Cabinet. A copy of the 4 February 1999 Crown Law advice was also provided. The Ministry worked on the basis that, in the media, Grant Cameron had indicated that claims would be filed in the High Court if no firm offer of an ADR process had been made by 1 March 1999.

7 Minister's decision not to proceed with ADR

7.1 On 26 February 1999, counsel from Crown Law met to discuss the Lake Alice claimants, as the Minister had decided to litigate.[45] It was noted the Minister wanted to test liability in court, considering Grant Cameron would have to prove the Crown acted in bad faith or without reasonable care, and that the limitation period could not be waived (given leave was required under section 124 of the Mental Health Act 1969). While Grant Liddell suggested a better approach for the Crown could be to act as a sort of amicus (as a vigorous defence on leave may be counter-productive), it was noted that the s 124 defence was not unreasonable and that the "Minister had a choice to tread softly and treat claimants gently, but had chosen to take a hard line and press ahead with litigation". The Crown Law team considered more clarification was needed from the Minister regarding the Crown's attitude to Dr Leeks. Grant Liddell also

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38 Letter from Rebecca Ellis and Grant Liddell to David Clarke, "Lake Alice Claims", 4 February 1999, OIA.06.01.0193. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

39 At [33].

40 At [34].

41 At [38].

42 At [39].

43 At [40].

44 Ministry of Health, "Lake Alice Claims – Deciding how the Government will respond", 12 February 1999, OIA.06.01.0132. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

45 File note, "Minutes of Lake Alice meeting", 26 February 1999 [note the file note is incorrectly dated 26 February 1998], OIA.06.01.0015. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

noted it was still not clear if the Ministry of Health wanted claims dealt with on legal merits.

7.2 On 2 March 1999, Crown Law advised Grant Cameron that the Minister of Health considered ADR was premature, and that litigation was needed to clarify the legal issues raised by the claims.[46]

7.3 The following day, Crown Law counsel held a meeting to discuss the Lake Alice claims.[47] At this point, counsel were still to go through the institutional files, and instructions were needed in regard to leave issues. Grant Liddell was drafting a letter to Peter Skegg asking for names of potential expert witnesses (this was sent on 5 March 1999).[48] Crown Law considered research needed to be done on sleep therapy in Australia, proceedings against the Crown in Australia regarding the lost generation, and the Cleveland child abuse cases – but that counsel would hold off on this research until they had the go-ahead from the Ministry. It was planned to make a list of questions for the Ministry, and to contact the Australasian Society for Psychiatry, Psychology and the Law.

8 Initiation of litigation

8.1 On 20 April 1999, GCA filed two statements of claim, notices of proceeding, and notices of interlocutory applications for leave to proceed for the Lake Alice claimants.[49]

8.2 On 28 April 1999, Crown Law wrote to GCA raising procedural issues with the claims filed, including a request for further particulars in order for Crown Law to file a statement of defence.[50] GCA (Prue Robertson) responded on 18 May 1999, stating there were sufficient particulars given that Crown Law had the clients' statements and medical files.[51] Further, they considered leave was not required, as the events grounding the causes of action were not in the pursuance or intended pursuance of the Mental Health Act 1969, and it was for the defendant to elect whether or not to raise Limitation Act issues by way of an affirmative defence.

8.3 On 21 May 1999, Crown Law wrote to GCA noting the Attorney-General was unable to meet the 26 May 1999 deadline for a statement of defence or make a decision on leave/limitation questions without further particulars.[52] Crown Law further noted the Attorney-General could not rely on "without prejudice"

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46 Grant Liddell, "Lake Alice Our Ref: HEA007/306", 2 March 1999, OIA.06.02.0552. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

47 Crown Law, "Minutes of Lake Alice Meeting", 3 March 1999, OIA.06.02.0527. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

48 Grant Liddell, "Lake Alice – Complaints of Mistreatment of Residents in 1970s Our Ref: HEA007/306", 5 March 1999, OIA.06.02.0519. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

49 Grant Cameron Associates (Prue Robertson), "Lake Alice – Proceedings", 20 April 1999, OIA.06.02.0421; Statement of Claim dated 20 April 1999, OIA.05.07.0062; Notice of Proceeding dated 20 April 1999, OIA.10.02.0005; Notice of interlocutory application by plaintiffs for leave to proceed pursuant to s 124(2) of the Mental Health Act 1969 dated 20 April 1999, OIA.10.02.0177. All provided to the Royal Commission in response to NTP 7 on 14 May 2020.

50 Grant Liddell and Rebecca Ellis, "Lake Alice proceedings Our Ref: HEA007/306", 28 April 1999, OIA.06.02.0367. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

51 Letter from Prue Robertson to Crown Law Office, "Lake Alice Proceedings", 18 May 1999, OIA.06.02.0345. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

52 Letter from Grant Liddell and Rebecca Ellis to Grant Cameron Associates, "Lake Alice Proceedings", 21 May 1999, OIA.06.02.0340. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

plaintiff statements. Considering adequate particularisation would be an onerous task, Crown Law suggested that Grant Cameron run one or two "test cases" in the first instance.

8.4 On 4 June 1999, Crown Law served notices requiring further particulars.[53]

8.5 As of mid-August, Crown Law and GCA were discussing whether to identify a number of test cases. On 17 August 1999, in preparation for a scheduled meeting on the 19 August 1999, Crown Law wrote to GCA noting it was in principle in favour of identifying a number of test cases.[54]

8.6 On 3 November 1999, in a Chambers hearing before Master Thomson, the parties agreed that the plaintiffs' applications for leave under the Mental Health Act 1969 would be adjourned to April 2000.

8.7 As at 26 November 1999, the plaintiffs' stated intention was to proceed with a selection of "test" cases. However, these cases were not yet identified. Crown Law had begun providing individual patient and other files in response to Privacy Act requests, although no formal discovery had yet occurred. Crown Law had also taken preliminary steps to obtain the services of expert psychiatrists with particular knowledge of the use of ECT with young persons in the 1970s.[55]

9 New Labour Government

9.1 On 27 November 1999, New Zealand held a general election. The incumbent National coalition government was defeated, and a Labour-led coalition formed the new government. On 10 December 1999, Hon Annette King succeeded Rt Hon Wyatt Creech as Minister of Health.

9.2 As at 23 December 1999, Grant Cameron was seeking a meeting with the new Minister of Health, who had requested a briefing on the Lake Alice claims by 20 January 2000.[56]

9.3 On 20 January 2000, the Ministry of Health provided the new Minister of Health with a briefing on the Lake Alice claims and the decisions of the previous Government.[57] At this point, the briefing recorded the Crown had:

(a) Located the patient, staff and other relevant files which may contain evidence as to the validity of the claims (noting these files were held by at least four different organisations and had been difficult to obtain in some cases);

(b) Begun to search the files for evidence as to the validity of the claims;

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53 Rebecca Ellis, "Lake Alice Proceedings Our Ref: HEA007/306", 4 June 1999, OIA.06.02.0325. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

54 Grant Liddell and Rebecca Ellis, "Lake Alice proceedings: meeting 19 August 1999", 17 August 1999, OIA.06.02.0165. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

55 Email from Grant Liddell to David Clarke, "RE: Lake Alice", 9:20 am 26 November 1999, OIA.06.02.0018. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

56 Email from David Clarke to Susan Minot (Ministry of Health), "Job Reallocation", 23 December 1999, OIA.28.03.0464. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

57 Ministry of Health, "Lake Alice Claims", 20 January 2000, OIA.06.03.0343. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

(c) Negotiated with Mr Cameron regarding the possibility and features of a dispute resolution process; and

(d) Formulated advice for Ministers on the advantages and disadvantages of the different responses available to the Crown.

9.4 The Crown had also made a preliminary approach to Dr Garry Walter, a child psychiatrist at the University of Sydney with specialist knowledge of the use of ECT on young persons, to act as an expert witness for the Crown.[58]

9.5 The Minister agreed to request an oral briefing by Health officials and Crown Law solicitors, meet with Grant Cameron, and send a letter to Mr Cameron.

9.6 On 24 January 2000, the Minister of Health wrote to Grant Cameron agreeing to meet; and requesting a short briefing paper and further particulars of his clients' claims.[59]

9.7 Also in January 2000, GCA provided a briefing paper to the Prime Minister.[60] The paper noted that "Given the consistency of [the claimants'] respective stories, their credibility is most compelling".[61] Further, "An exhaustive factual analysis reveals the events at Lake Alice to have constituted systematic and extensive child torture extending over a number of years". GCA considered "the previous government's approach to the affair has been one of delay, obfuscation, procrastination, avoidance of the issues and a failure to act in good faith".[62] Negotiated settlement was recommended, rather than pursuing court resolution.

9.8 On 14 February 2000, Grant Cameron wrote to Mr Tony Timms at the Prime Minister's office further to a discussion held a fortnight prior, suggesting that discussions about arbitration should be held with them instead of with the Ministry of Health.[63] Mr Cameron sought his advice, as he was reluctant to respond to the Minister of Health without first knowing whether or not there was any desire to address the matter within the Prime Minister's office.

10 Move from litigation to negotiation-based process

10.1 On 7 March 2000, the Department of the Prime Minister and Cabinet (**DPMC**) wrote to the Ministry of Health and Crown Law asking for a paper revisiting the decision of the previous Government to litigate the Lake Alice claim.[64]

10.2 The letter outlined the key concerns any alternative process should address:

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58 Grant Liddell, "Lake Alice Claims Our ref: HEA007/306", 14 July 1999, OIA.06.02.0248. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

59 Hon Annette King, "Without Prejudice", 24 January 2000, OIA.06.03.0163. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

60 Grant Cameron Associates, "Briefing Paper: Civil Issues", January 2000, OIA,06.03.0164. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

61 At [1].

62 At [4(a)].

63 Letter from Grant Cameron to Mr Tony Timms, "Re: Lake Alice", 14 February 2000, OIA.06.03.0160. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

64 Letter from Denis Clifford to the Ministry of Health and Crown Law, 7 March 2000, OIA.06.03.0319. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

(a) Achieving a level of comfort as to the underlying factual circumstances/legal issues sufficient to support a decision to settle claims ahead of the Court process; and

(b) A sensible way of dealing with the multiplicity of claims, for example by some categorisation of claims and the possible components of a settlement package.

10.3 The letter noted the possibility of an agreed statement by the Government acknowledging the wrong, expressing regret, recording that some people had suffered more than others, and acknowledging that monetary payments would be made to various categories of people reflecting that different level of harm.

10.4 The requested paper was also to include a summary of Treasury's concerns. DPMC proposed to consult with Treasury after agreeing the draft paper, and in the meantime would suggest the Prime Minister's office inform Grant Cameron that the Government was open to the possibility of reconsidering the previous decision to litigate.

10.5 On 25 March 2000, Grant Cameron wrote to the Prime Minister's office seeking a meeting with the Prime Minister to resolve whether the Lake Alice claims would be determined by litigation, settlement or arbitration.[65]

10.6 On or about 30 March 2000, the Ministry of Health provided the Prime Minister and Minister of Health a briefing reviewing the decision to proceed with the Lake Alice claims by litigation.[66] The Ministry of Health considered the risks with proceeding by litigation were sufficient for the Government to review the previous Government's decision. The risks related to the nature of the claims, number of claims, the nature of the claimants themselves and adverse public opinion.

10.7 Although there were "technical" defences available, Crown Law advice was that the claims presented a considerable litigation risk to the Crown. Further advice from Crown Law on the likelihood of the defences succeeding was recommended before deciding whether to waive the technical defences.

10.8 The Treasury favoured litigation because of the uncertainty of the law, and therefore the desirability of having the courts establish the law in this area. It was also concerned about the precedent effect of adopting a non-litigious approach.

10.9 On 5 May 2000, the Offices of the Prime Minister and the Minister of Health provided a memorandum to the Cabinet Policy Committee recommending pursuing a negotiated resolution of the Lake Alice claims.[67] It was proposed that officials report back by 26 July on the outcome of the negotiations and associated issues.

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65 Letter from Grant Cameron to the Office of the Prime Minister, "Lake Alice", 25 March 2000, OIA.06.03.0156. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

66 Ministry of Health, "Lake Alice Claims: Review of the decision to proceed by litigation", 30 March 2000, OIA.06.03.0278. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

67 Memorandum to Cabinet Policy Committee, "Lake Alice Hospital Adolescent Unit Claims: Proposal for Negotiated Settlement", 5 May 2000, OIA.06.03.0221. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

10.10 The Ministry of Health supported a negotiated resolution for the following reasons:

(a) The nature and number of the claims that had been made;

(b) The disadvantaged status of the claimants;

(c) The ability of a negotiation-based process to address grievances in a non-legal way (e.g. use of apologies); and

(d) The flexibility provided by a negotiation-based process.

10.11 Treasury did not support the ADR process, and continued to favour litigation, as it considered that some of the litigation risk could be managed (for example, through the Crown negotiating a specific test case to clarify the law in relation to the claimants).

10.12 On 10 May 2000, the Cabinet Policy Committee directed:[68]

(a) Officials and Crown Law to commence negotiations with Mr Cameron, with a view to establishing a negotiation-based ADR process for the purpose of resolving out of court the claims the former patients had filed in the High Court;

(b) The Ministry of Health to seek Crown Law advice on the likelihood of success of technical defences; and

(c) The Ministry of Health to report back to the Cabinet Policy Committee by 26 July 2000 on:

(i) the outcome of the negotiations with Mr Cameron;

(ii) the likelihood of success of technical defences; and

(iii) the funding required for the ADR process.

10.13 This decision was ratified by Cabinet on 15 May 2000.[69]

10.14 On 23 May 2000, David Clarke wrote to Grant Liddell instructing Crown Law to:[70]

(a) Contact Grant Cameron for the purpose of initiating discussions to attempt to establish a negotiation process for settling the claims lodged in the High Court by Mr Cameron's clients; and

(b) Provide advice to the government on the likelihood of the various "technical defences" available to the Crown in the proceedings succeeding.

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68 Minute of the Cabinet Policy Committee, "Lake Alice Hospital Adolescent Unit Claims: Proposal for Negotiated Settlement", POL (00) M 10/2, 10 May 2000, OIA.06.03.0154. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

69 Cabinet Minute, Report of the Cabinet Policy Committee: Period Ended 12 May 2000, CAB (00) M 16/2F, 15 May 2000, OIA.06.03.0152. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

70 David Clarke, "Lake Alice Proceedings", 23 May 2000, OIA.06.02.0151. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

11 Further negotiations with Grant Cameron

11.1 On 2 June 2000, Crown Law (Hamish Hancock) wrote to GCA advising that Cabinet had directed officials and Crown Law to explore with it the possibility of establishing an alternative process for resolving its clients' claims against the Crown than by proceeding with the litigation.[71] Crown Law "welcome[d] [Grant Cameron's] views on the form any alternative resolution might take", and suggested meeting after the Crown had the opportunity to consider any proposals. As a preliminary step, Crown Law asked whether GCA would envisage any such process extending to those clients who were claimants but who had not filed proceedings yet, and if so to provide their details and Grant Cameron's authority to act for them.

11.2 On 8 June 2000, Grant Cameron provided a draft "Agreement to Submit to Mediation/Arbitration".[72] The Agreement was modelled off a similar arrangement in the Cave Creek matter. Mr Cameron proposed that Limitation and Mental Health Act issues should be set to one side, as "equity demanded that these issues be addressed without resort to 'legal technicalities'". He further proposed the Crown set aside the legal consequences of the introduction of the ACC regime. Mr Cameron suggested a "fiscal envelope" could be introduced to provide for suitable minimum and maximum parameters.

11.3 On 10 June 2000, Mr Cameron provided authorities from 10 further individuals whom he envisaged would participate as claimants in any resolution process.[73]

11.4 On 11 July 2000, Mr Cameron wrote to Crown Law outlining the basis of his clients' claims at law.[74]

11.5 On 28 July 2000, Grant Cameron wrote to Crown Law regarding the need to determine the structure or process to be followed.[75] In this letter, Mr Cameron observed that the statements of claim that had been filed were pro forma in nature and that, as a consequence, the Crown may not be completely clear about the issues or the consequences the claimants would allege.

11.6 On 10 August 2000, Crown Law wrote to Dr Brinded seeking his engagement as an expert forensic psychiatrist for either the Court or the ADR process.[76] His role would be to undertake psychiatric examinations of the claimants. Crown Law also asked that Dr Brinded approach Dr David Chaplow informally to ascertain if he was interested and available during the relevant period.

11.7 On 14 August 2000, Crown Law wrote to Dr Garry Walter seeking his engagement as an expert witness to:[77]

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71 Hamish Hancock, "Lake Alice: possible ADR process Our Ref: HEA007/306", 2 June 2000, OIA.06.03.0132. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

72 Grant Cameron, "Lake Alice", 8 June 2000, OIA.06.03.0089. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

73 Grant Cameron, "Lake Alice", 9 June 2000, OIA.06.03.0088. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

74 Grant Cameron, "Lake Alice", 11 July 2000, OIA.06.03.0059. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

75 Grant Cameron, "Lake Alice", 28 July 2000, OIA.06.03.0002. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

76 Hamish Hancock, "Lake Alice litigation Our Ref: HEA007/306", 10 August 2000, OIA.06.04.0492. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

77 Grant Liddell, "Lake Alice claims: claims of inappropriate use of ECT Our Ref: HEA007/306", 14 August 2000, OIA.06.04.0438. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

(a) Provide some international context – a description of the use of ECT and its international acceptability in the 1970s, and a description of the use of ECT in New Zealand or Australasia; and

(b) Review the forensic psychiatrist's reports and assess whether the psychiatrist's findings concerning the impacts, if any, of ECT on plaintiffs were realistic in light of his views concerning the acceptable use of ECT in the period.

11.8 On 17 August 2000, Denis Clifford (DPMC; later his Honour Justice Clifford) telephoned David Clarke to note that the relevant politicians were uncomfortable that the approach being developed was too legalistic.[78] Mr Clarke understood the politicians may wish to settle the matter based on political considerations. Mr Clarke was to report back to Cabinet on how to proceed by 18 September 2000 (the earlier July report back having been postponed). Mr Clifford also spoke about a possible initial offer to the claimants, including an appropriately worded apology/statement of regret in any settlement; and possibly looking at taking action against individuals involved (such as disciplinary action against Dr Leeks).

11.9 On 21 August 2000, David Clarke reported to Crown Law the results of his conversations with Drs Brinded and Chaplow.[79] It would take a psychiatrist a minimum of 2 months to carry out the psychiatric assessments of the claimants. Neither Dr Brinded nor Dr Chaplow had two clear months of time to devote to this task.

11.10 Mr Clarke forwarded a note from Dr Duncan (Deputy Director of Mental Health) advising against individual assessments of Lake Alice patients on the following basis:[80]

(a) It could be assumed adolescents weren't admitted to the adolescent unit without "good cause" (i.e. they were all significantly conduct disordered);

(b) The Ministry had accepted there was a "culture of fear" in the adolescent unit and that ECT was used as punishment. As a consequence, it was inevitable that all claimants would have been psychologically damaged by their experience;

(c) There was no good evidence for any long-term brain damage from ECT, and it could be assumed the harm claimants were claiming was psychological harm;

(d) There were many factors that could contribute to a person's psychological harm, although claimants could understandably consider they came from unblemished home backgrounds and that the ECT at Lake Alice was the sole cause of their subsequent "failure in life";

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78 Email from David Clarke to Hamish Hancock and Grant Liddell, 'Lake Alice', 17 August 2000, OIA.06.04.0436

79 Email from David Clarke to Hamish Hancock and Grant Liddell, "Lake Alice", 21 August 2000, OIA.06.04.0431. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

80 Note by Dr Anthony Duncan, "Notes for meeting with Dave Clarke re Lake Alice claims", 21 August 2000, OIA.06.04.0432. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

(e) A psychiatric assessment was not going to give any further information, as a person's reports would be coloured by their own perception of the past and their willingness to blame most, if not all, their difficulties on their Lake Alice experience;

(f) The emotive content of some claimants' statements in a court setting could move "the cap" up as each one could be seen to be "more traumatised than one would expect on average"; and

(g) There was a risk a High Court judge could assess a witness's credibility and down-rate certain persons' claims because of their very disorganised personality structure.

11.11 On 31 August 2000, Chris Chapman (Crown Law) provided the Ministry of Health with a draft memo providing an informal estimate of the costs and liability to the Crown if the Lake Alice claims were to go to trial.[81] He considered there was a 50-60% chance the Crown would not be found liable if the Lake Alice matters proceeded to trial. Conversely, there was a 40-50% chance the Crown would be exposed to liability of between $0 and $345,000. However, Mr Chapman noted it was possible these estimates were grossly inaccurate and in a worst-case scenario the Crown could be exposed to liability as high as $20 million or more.

12 Disagreement over psychiatric examinations

12.1 On 24 August 2000, John Billington QC wrote to Crown Law following a telephone call with Hamish Hancock.[82] Mr Billington sought clarification as to whether proposed "psychiatric evaluations and the like" would occur in the context of an agreement to mediate and/or arbitrate.

12.2 Mr Hancock replied on 6 September 2000.[83] He noted it was important that each claimant had filed a statement of claim and given authority to Mr Cameron to negotiate a mediation/arbitration agreement subject to confirmation when its exact terms had been settled.

12.3 Mr Hancock's second priority was psychiatric examinations. Crown Law was close to being able to provide Mr Billington with the names of the psychiatrists and suggested dates for the examinations. For that purpose, Crown Law required the medical files relating to each claimant as soon as possible.

12.4 Mr Hancock noted the psychiatric examinations were proposed to be in the context of an agreement to mediate and/or arbitrate, and Crown Law saw it as a valuable and necessary pre-mediation/arbitration task. The systematic compilation of evidence, its analysis by experts, and the use of this evidence in individual examinations would provide the arbitrator/mediator with organised material to enable them to move more quickly than would otherwise be the case.

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81 Chris Chapman, "HEA007/306 – Lake Alice: Informal estimate of liability/cost", 31 August 2000, OIA.06.04.0382. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

82 John Billington QC, "The Children of Lake Alice", 24 August 2000, OIA.06.04.0426. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

83 Letter from Hamish Hancock to John Billington QC, 'Lake Alice Claims', 6 September 2000, OIA.06.04.0365. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

12.5 On 8 September 2000, Grant Cameron responded to Mr Hancock's 6 September 2000 letter to John Billington QC.[84] Mr Cameron considered the priority matter was not providing a full list of claimants or completing psychiatric examinations, but rather for the Crown to agree to an ADR process. Mr Cameron took issue with Mr Hancock's reference to "mediation/arbitration", as he considered mediation inappropriate given it was not binding on the parties. Mr Cameron anticipated any arbitration would be a binding mechanism for full and final resolution, and that there could be no contemplation of resorting to litigation if unsuccessful.

12.6 Mr Cameron noted he was not prepared to embark on any pre-mediation/arbitration process without a written commitment to a final and complete resolution mechanism, being a written arbitration agreement with appropriate terms.

12.7 The same day, John Billington QC responded to Hamish Hancock's letter.[85] Mr Billington understood that, following the approach to the Prime Minister's office, it was agreed the matter would be resolved by mediation/arbitration and not court proceedings, and asked Mr Hancock to let him know if this was incorrect. If mediation/arbitration was agreed, then there was no doubt the next part of the process could be the psychiatric examinations, and Mr Billington confirmed he saw such examinations as being an important part of the process. "However, if the Crown does not agree to mediation/arbitration then we will have to revert back to the process that was in place through the Courts last year".

12.8 On 12 September 2000, an internal Crown Law meeting was held to discuss the current information authorities for the claimants.[86] Crown Law considered these authorities were inadequate, as they related only to time spent by the plaintiffs at Lake Alice. New authorities relating to the time both before and after claimants were at Lake Alice were considered necessary to enable Crown Law to evaluate the claims, for psychological examination, for mediation, and for any potential trial.

12.9 On 14 September 2000, Professor Brinded wrote to Hamish Hancock noting his reservations regarding the current plan for psychiatric examinations.[87] He noted none of the contacted psychiatrists were able to free a complete week for assessment prior to Christmas, and that to examine every plaintiff to the level required so that proper professional expertise and advice could be brought to bear on the matter would take more than the time suggested. Trying to determine causation of any continuing difficulties would also be very difficult, given the complex nature of the plaintiffs as people who have likely experienced behavioural disorder since early adolescence.

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84 Letter from Grant Cameron to Hamish Hancock, "Lake Alice Claims", 8 September 2000, OIA.06.04.0358. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

85 Letter from John Billington QC to Hamish Hancock, "Lake Alice Claims – Your ref: HEA 007/306", 8 September 2000, OIA.06.04.0362. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

86 File note, "Lake Alice update meeting: 12 September 2000", OIA.06.04.0347. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

87 Letter from Professor Brinded to Hamish Hancock, "Re: Lake Alice Litigation – Your Reference HEA007/306", 14 September 2000, OIA.06.04.0344. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

12.10 On 15 September 2000, Crown Law forwarded Dr Brinded's 14 September 2000 letter to the Ministry of Health.[88] Mr Hancock noted he had that morning arranged an alternative proposal with Drs Brinded and Chaplow consisting of initial interviews of ten claimants selected by their lawyers, with five to occur in Christchurch with Dr Brinded and five to occur in Auckland with Dr Chaplow.

12.11 On 18 September 2000, Hamish Hancock wrote to John Billington QC with the revised approach of conducting 10 initial psychiatric assessments.[89] He noted Dr Brinded had offered time on 27 October and 3 November to conduct assessments.

12.12 The same day, Grant Cameron wrote to the Prime Minister, the Rt Hon Helen Clark, complaining that no progress had been made with the Lake Alice claimants.[90] He made the following specific complaints:

(a) The Crown would not commit to any particular resolution process;

(b) The Crown reserved its right to plead limitation and all other defences;

(c) The Crown would attempt to engage Dr Leeks as a Crown witness in any resolution process; and

(d) The Crown would not commit to any fiscal envelope at that time.

12.13 Mr Cameron considered good faith bargaining would have included the following:

(a) A preliminary meeting to confirm that resolution by arbitration was agreed;

(b) Concessions on limitation and ACC defences in exchange for a fiscal envelope;

(c) Discussion as to who the arbitrator might be;

(d) Debate as to terms of reference and process issues;

(e) Agreement on timetabling;

(f) Discussion as to costs;

(g) Appointment of an arbitrator;

(h) Resolution of procedural/administration issues by the arbitrator;

(i) Commencement of the arbitration.

12.14 Mr Cameron expressed reservations as to who was actually controlling the process – "Is it the Crown Law Office, or is it their client the Ministry of Health?

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88 Letter from Hamish Hancock to the Ministry of Health, "Lake Alice Claims", 15 September 2000, OIA.06.04.0335. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

89 Hamish Hancock, "Lake Alice Claims Our Ref: HEA007/306", 18 September 2000, OIA.06.04.0333. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

90 Grant Cameron, "Lake Alice – No Progress", 18 September 2000, OIA.06.04.0290. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

Alternatively, could it be Treasury, who I am told wish to adhere to the Wyatt Creech position. (It certainly does not appear to be your own office)."

12.15 Mr Cameron sought written confirmation from the Prime Minister's office that resolution by arbitration would be pursued, with an arbitration agreement signed by parties within an agreed period and any lingering arguments as to procedure to be referred for the arbitrator to determine.

12.16 On 20 September 2000, John Billington QC wrote to Hamish Hancock indicating the psychiatric interview arrangements appeared to be sensible, but that as a precondition to it occurring there had to be an agreement to an arbitration/mediation/inquiry.[91]

13 Further Cabinet decisions and ongoing negotiations with Grant Cameron

13.1 On 21 September 2000, the Minister of Health submitted a memorandum to the Cabinet Policy Committee proposing to establish an alternative dispute resolution process to settle the grievances of former patients of Lake Alice Hospital.[92] The paper sought an $8 million funding package to attempt to settle the Lake Alice claims through direct negotiation, or failing a negotiated settlement, through a hybrid mediation/arbitration model. It was anticipated the claimants would receive on average $40,000 each, with the remainder of the fund going towards plaintiffs' legal costs, benevolent action on behalf of plaintiffs, and the Crown's administrative costs (legal and psychiatric).

13.2 The paper also instructed Crown Law to attempt to resolve the claim brought by Ms McInroe and Mr L in the same manner as the claims brought by the other former patients within the constraints of the proposed $8 million funding package.

13.3 The paper recommended that the Cabinet Policy Committee authorise the Minister of Health to manage the process for resolving the matter with the ability to delegate matters as necessary to officials in the Ministry of Health and Crown Law. The paper further recommended that the Cabinet Policy Committee authorise the Prime Minister, the Minister of Health and the Minister of Finance to approve the final terms of any settlement which was reached.

13.4 On the question of whether to waive technical defences, the paper noted the defences in question were not strictly speaking purely "technical". Crown Law had advised the Crown was able to justify the use of its Limitation Act 1950 defence on a principled basis, as the Crown's ability to respond to specific allegations of harm inflicted on specific individuals would be affected by the fact that evidence required to mount a full defence may no longer be available. The paper advised the Crown would not rely on those defences as a bar to resolving the former patient's claims if an ADR model was used. The Crown may, however, wish to raise the fact that it may not be possible to substantiate

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91 Letter from John Billington QC to Hamish Hancock, "Lake Alice Claims – Your Ref: HEA007/306", 20 September 2000, OIA.06.04.0313. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

92 Memorandum to the Cabinet Policy Committee, "Proposal to establish and alternative dispute resolution process to settle the grievances of former patients of Lake Alice Hospital", 21 September 2000, OIA.06.04.0239. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

particular allegations as an issue when negotiating the quantum of any negotiated settlement of those claims.

13.5 It was therefore not recommended that the Crown agree to waive its right to those defences, as to do so would substantially strengthen the negotiating position of GCA, and weaken the ability of the ADR process to test the veracity of all of the former patient's specific allegations.

13.6 On 22 September 2000, Hamish Hancock wrote to John Billington QC confirming the government was keen to try and resolve the Lake Alice claims without resorting to court proceedings.[93] The government had little problem in principle with the mediation/arbitration agreement provided by Mr Cameron on 8 June 2000, and was hopeful the matter might be resolved more simply still by direct negotiation.

13.7 However, Mr Hancock considered the Crown had been hampered in its ability to seek final decisions on the approach to settlement, as it was still waiting for basic information on the details of Grant Cameron's clients' individual claims. Mr Hancock noted the Crown required:

(a) A full list of all those who wished to participate in any ADR process;

(b) Updated statements of claim specific to each of the individual claimants;

(c) All claimants to have filed a statement of claim and given Grant Cameron Associates authority to negotiate on their behalf;

(d) Claimants to make available their medical files relating to their claim and/or grant authority to the Crown to obtain all documents and information relevant to their claim from appropriate agencies;

(e) Claimants to confirm their availability for interview and examination by the Crown's nominated psychiatric experts.

13.8 It was Mr Hancock's instruction to prepare for any contingency, however the Government's clear preference was to resolve the claims through a soundly based ADR process.

13.9 The same day, Grant Cameron sent a letter to Crown Law noting the process of psychiatric examinations was necessarily subsequent to the Crown first committing to a resolution process and seeking an urgent response to his 8 September 2000 letter.[94] Grant Cameron further requested full copies of the Commission of Inquiry papers (including the full transcript and evidence and all briefs of evidence), and the Ombudsmen's file in relation to all inquiries made in respect of Lake Alice.

13.10 On 26 September 2000, Grant Cameron responded to Mr Hancock's 22 September 2000 letter to John Billington QC.[95] Mr Cameron indicated he would

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93 Letter from Hamish Hancock to John Billington QC, "Lake Alice claims", dated 15 September 2000 but sent 22 September 2000, OIA.06.04.0280. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

94 Letter from Grant Cameron to Crown Law, "Lake Alice", 22 September 2000, OIA.06.04.0299. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

95 Letter from Grant Cameron to Crown Law, "Lake Alice", 26 September 2000, OIA.06.04.0250. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

provide a fresh, up-to-date client list and updated statements of claim shortly. However, Mr Cameron saw no benefit in filing the statements of claim. He also saw no need for an official "authority to negotiate" – such authority could be implied given he was the solicitor on the record, and any arbitration/settlement proposals would be brought to each client for individual approval.

13.11 Mr Cameron noted that psychiatric examination would have no relevance to questions of liability, and so would only be relevant to the secondary stage of determining quantum. He also noted the difficulty with collating the relevant medical information, given the time that had passed and the transient nature of some of his clients. This meant that some clients would be disadvantaged by gaps in their medical history.

13.12 Grant Cameron suggested a $12-30 million fiscal envelope would be appropriate to settle the Lake Alice claims. Mr Cameron considered it reasonable for the Crown to make a final election between arbitration or court on or before 13 October 2000. He suggested that each side nominate three parties as potential arbitrator, with an arbitration agreement executed during the week commencing 16 October 2000. Administrative questions as to process could be left to the arbitrator to determine where the parties could not agree.

13.13 On 4 October 2000, the Cabinet Policy Committee approved the recommendations of the Minister of Health in her memorandum of 21 September.[96]

13.14 That same day, Grant Liddell wrote to GCA noting the Government was keen to try and resolve the claims without resorting to court proceedings, but that it did not agree that a binding agreement as to process was the very first question.[97] Crown Law considered a full list of claimants was needed, as each claim was "important and will receive individual consideration. Indeed we are obliged to consider each carefully and to receive expert evidence on aspects of any claim which call for it".

13.15 Crown Law further required that every claimant who wished to participate in mediation/arbitration had first filed a statement of claim, in order to preserve their legal rights.

13.16 Crown Law repeated its request for the claimants' medical files and suggested further dates that Dr Brinded and Dr Chaplow were available to carry out psychiatric examinations.

13.17 Crown Law noted the Crown had not acknowledged legal liability in relation to the Lake Alice patients' claims and considered arbitration/mediation would address both the issues of liability and quantum. Crown Law noted that, if the matter proceeded to litigation, GCA could not resist a request for s 100 Judicature Act psychiatric examinations on the part of all claimants. Further, the Crown was entitled to put forward a proper and adequate defence on both liability and quantum in any arbitration/mediation proceeding that may be agreed.

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96 Cabinet Policy Committee minute, "Grievances of Former Patients of Lake Alice Hospital: Alternative Dispute Resolution Process", POL (00) M 27/3, 4 October 2000, OIA.06.04.0110. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

97 Letter from Grant Liddell to Grant Cameron Associates, "Lake Alice Claims – CP 91/99 and CP 92/99", 4 October 2000, OIA.06.04.0117. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

13.18 Although the Crown accepted that a mediation/arbitration model was a suitable way to deal with the dispute, Mr Liddell stated it must be satisfied that the terms were in all respects acceptable before committing to any particular form of binding agreement. The Government could not agree to an inadequate process which failed to sufficiently examine the allegations put forward by Grant Cameron.

13.19 On 16 October 2000, Crown Law forwarded the two volumes of claimant briefs to Rainey Collins Wright & Co, seeking Dr Leeks' rebuttal to the specific allegations/complaints made against him, and more generally, to the overall tenor of the allegations made against how the Child and Adolescent Unit was operated during the period of Dr Leeks' involvement by 6 November 2000.[98] The Crown reserved all its rights concerning Dr Leeks, noting it may be compelled to consider other methods should his cooperation be withheld.

13.20 On 19 October 2000, GCA wrote to Crown Law indicating it may agree to psychiatric examinations taking place before a binding arbitration agreement, given a number of issues were resolved.[99]

13.21 GCA would agree the reports could be made available to a mediator/arbitrator or the Court on the basis that:

(a) They had the status of information and unsworn evidence only;

(b) GCA was under no obligation to agree to their admissibility in any other sense;

(c) GCA was not obliged to agree with all or part of the reports;

(d) GCA could make submissions as to the weight which the arbitrator/mediator (or the Court) should give to such reports;

(e) If GCA disputed the findings of any report, the medical practitioner would be available for cross-examination at any hearing, or otherwise as was appropriate to any process that might be agreed to.

13.22 Grant Cameron asked that the Crown agree to meet the costs of the psychiatric examinations.

13.23 GCA noted they were unable to provide a final list of all the claimants by the previously agreed deadline, but were endeavouring to contact everyone to ensure an accurate list was provided. GCA would provide particulars for each claimant, but would not commit to wasting their clients' money on filing fees by filing statements of claim for each client.

13.24 GCA indicated it would modify the form of authority provided by Crown Law and return it as soon as possible. It considered it was unnecessary to require medical records from its clients that were irrelevant to their clients' claims.

13.25 Grant Cameron noted his concern regarding the inability of the Crown to provide the requested Lake Alice and Social Welfare/Education Department files

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98 Letter from Hamish Hancock to Rainey Collins Wright & Co, "Lake Alice Claims", 16 October 2000, OIA.06.04.0077. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

99 Letter from Grant Cameron Associates to Crown Law, "Lake Alice Claim", 19 October 2000, OIA.06,04,0079. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

held about his clients; and the Commission of Inquiry and Ombudsmen's investigation files.

13.26 The same day, Grant Liddell emailed David Clarke regarding documents to provide to Grant Cameron.[100] Mr Liddell proposed that the Crown begin a discovery-style process, and that the Crown provide Grant Cameron with a confidential copy of the Ombudsman report. Mr Liddell expressed some concern that not all of the relevant material had been located and provided by the relevant departments.

13.27 On 24 October 2000, Crown Law wrote to Dr Chaplow and Dr Brinded noting the plaintiffs would not be available for examination on the dates set aside. As an alternative, Crown Law provided the information of 10 clients for each psychiatrist to review and report whether they considered that the harm each plaintiff claimed was attributable to what they said occurred to them at Lake Alice.[101]

13.28 The same day, Crown Law wrote to Ron McQuilter at the Investigation Bureau, requesting that they conduct interviews of certain Lake Alice staff members named in the claimants' statements.[102] This was in order to act as a quality control/audit on the reliability of the material being put forward on behalf of the claimants in a situation where, through the passage of time, it was difficult to research and to answer many of the criticisms being made. "The Crown wishes to arrive at the truth, one way or the other, and whether the material you obtain from these witnesses is favourable or unfavourable to the Crown case it will be equally valuable in assisting in a resolution".

13.29 On 24 November 2000, Crown Law provided GCA with the requested material relating to the Commission of Inquiry and Ombudsmen's Inquiries relating to Lake Alice Hospital.[103]

13.30 On 28 November 2000, GCA wrote to Crown Law regarding the upcoming review of the proceedings in the Master's list on 5 December 2000. GCA suggested the matter should be further adjourned, preferably sine die, but if the Master was not agreeable then for six months.[104]

13.31 The same day, Crown Law responded to GCA's letter of 19 October 2000 (and follow-up letter dated 20 November 2000).[105]

13.32 Regarding the psychiatric examinations, Crown Law noted there were certain minimum standards required on its side in terms of the quality and reliability of the evidence upon which any damages calculations were to be based. It

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100 Email from Grant Liddell to David Clarke, "Lake Alice: sundry issues relating to documents: HEA007/309", 19 October 2000, OIA.06.04.0085. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

101 Letter from Grant Liddell to Dr Chaplow and Dr Brinded, "Lake Alice litigation: Assessment of plaintiffs' claims to have suffered mental injury", 24 October 2000, OIA.06.04.0056. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

102 Letter from Hamish Hancock to Ron McQuilter, "Lake Alice claims", 24 October 2000, OIA.06.04.0063. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

103 Grant Liddell, "Lake Alice Claims Our Ref: HEA007/306", 24 November 2000, OIA.06.05.0251. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

104 Grant Cameron Associates (Sarah Simmonds), "Lake Alice Proceedings", 28 November 2000, OIA.06.05.0218. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

105 Letter from Grant Liddell to Grant Cameron Associates, "Lake Alice", 28 November 2000, OIA.06.05.0227. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

therefore had no choice than to require those allegations and the facts underpinning them to be thoroughly tested by appropriate psychiatric specialists, regardless of the method of resolving the claims. The Crown was therefore unable to agree to the various pre-conditions upon future use in the proceedings of the psychiatric examinations and reports.

13.33 Crown Law reiterated that the Government's clear preference was for mediation/arbitration or direct negotiated settlement.

13.34 Crown Law noted it had never asked GCA to accept the correctness of any report produced, and that it was free to attack any findings both in settlement discussions, before the mediator/arbitrator or in the course of a hearing.

13.35 The Crown, subject to reasonableness, was willing to agree to costs as contemplated by section 100 Judicature Act 1908 being met. In order to have a clear and firm structure in place, Crown Law proposed seeking a formal order for psychiatric examination under section 100 by consent when the matter was next called.

13.36 Regarding statements of claim, Crown Law saw no reason why GCA's clients should not file fully particularised statements of claim as required by the Rules, as it was a normal obligation of any other litigant. Further, Crown Law did not agree to any moratorium on the question of limitation. The Crown did not admit liability in respect of any of the claims and preserved all defences available to it.

13.37 Regarding the claimants' medical files, the Crown considered it needed to eliminate the possibility that any issues relating to the claimants' physical and mental conditions might have arisen from other causes.

13.38 Regarding the Ombudsmen's files concerning Sir Guy Powles' investigation, Crown Law noted those files were not the Crown's, and accordingly, the Crown could not waive any privilege concerning them, and by virtue of the Ombudsman Act 1975 those files were unavailable. Grant Cameron was invited to approach the Ombudsman directly to determine whether an exception might be made, but Mr Liddell's conversations with the Ombudsmen's Office indicated it would be unlikely.

13.39 On 30 November 2000, Crown Law provided GCA with draft applications for orders under section 100 of the Judicature Act 1908 and regarding discovery and consolidation.[106]

13.40 On 1 December 2000, GCA wrote to Crown Law responding to the draft applications.[107] GCA considered s 100 orders should not be sought until the pleadings had closed and the Crown had filed a statement of defence. It also considered it was inappropriate to pursue arbitration, while at the same time requiring certain aspects of the Court process to continue. GCA considered there was "some manipulation of the systems to the advantage of the Crown, so that where it is advantageous, the rules of the Court are relied on, and where

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106 See Grant Liddell Facsimile, "Lake Alice", 30 November 2000, OIA.06.05.0202; Draft Notice of Defendant's interlocutory application for orders (1) Section 100 of the Judicature Act 1908; (2) Particular discovery; (3) Consolidation of CP91/99 and 92/99, 30 November 2000, OIA.06.05.0203. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

107 Letter from Grant Cameron to Crown Law, "Lake Alice Claim", 1 December 2000, OIA.06.05.0176. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

there is no advantage or disadvantage, those rules are swept aside. In light of your move to advance the litigation process, we have no option but to reconsider whether we can properly supply our clients' statements at this stage".

13.41 GCA requested that the Crown clarify its position on arbitration/mediation. It did not consider a combined approach with court proceedings appropriate.

13.42 Regarding the Master's call, GCA noted it was not in a position to consent to the application in Court unless a statement of defence was first filed and their pleadings amended.

13.43 On 4 December 2000, the Crown made applications for orders under section 100 of the Judicature Act 1908, for particular discovery and consolidation of the proceedings, for the call in the Master's list the following day.[108] At that call, the plaintiffs opposed all the Crown's applications, noted no progress had been made in negotiating ADR or settlement, and sought an adjournment for six months.[109] The Master indicated that he proposed to adjourn all matters to 10 April 2001, but with leave for any party to apply earlier for any matter to be brought on. The Crown advised that its preference was for its applications to proceed by way of consent.

13.44 On 8 December 2000, Crown Law wrote to GCA reaffirming the Crown's preference to seek alternative dispute resolution of the proceedings, and for the psychiatric examinations to proceed by agreement.[110]

13.45 Crown Law noted it still awaited the plaintiffs' further particulars, which were first requested on 3 June 1999. If GCA considered psychiatric examinations could not occur until the pleadings were closed, "then that is a matter that is largely in your hands. For our part we would regret the delay that any such decision on your part would involve".

13.46 Crown Law noted it needed the claimants' statements in order to evaluate the strength of their legal claims and to enhance the quality of the medical reports from psychiatric examinations. This would directly influence Crown Law's settlement recommendations concerning the claims if all of those steps revealed a solid basis for legal liability. There would be no minimum figure offered for the mediation/arbitration agreement until the Crown was satisfied that such a figure represented a realistic reflection of its potential legal liability, or alternatively it reflected the Government's wish to make an ex gratia offer.

13.47 On 11 December 2000, Rainey Collins Wright & Co provided Crown Law with a list of potential witnesses.[111] They also indicated they had received Dr Leeks' responses to the allegations contained in the statements from the Lake Alice claimants, and would be willing to release that material for the purpose of the proposed mediation upon receiving a signed undertaking that such material

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108 Notice of Defendant's interlocutory application for order: (1) Section 100 of the Judicature Act 1908 (2) particular discovery (3) Consolidation of CP91/99 and 92/99", 4 December 2000, OIA.06.05.0157. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

109 File note by Grant Liddell, "Master's List – 5 December 2000", 5 December 2000, OIA.06.05.0145. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

110 Letter from Grant Liddell to Grant Cameron Associates, "Lake Alice", 8 December 2000, OIA.06.05.0137. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

111 Letter from Rainey Collins Wright & Co to Crown Law, "Dr Leeks", 11 December 2000, OIA.06.05.0009. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

would only be used in relation to the mediation and would not at any time or for any purpose be used against Dr Leeks and would not be released to any other person without their signed consent.

13.48 On 18 December 2000, GCA wrote to Crown Law to advise it could not consent to the progression of the psychiatric examinations at that time.[112] Grant Cameron did not agree that "mental injury" was an important part of the claimants' cases. He considered the Crown should not be concerned with such issues except in those cases where psychiatric injury had been placed directly in issue. Many clients had expressed considerable reluctance about being subjected to a psychiatric examination, due to their experiences at Lake Alice at the hands of psychologists/psychiatrists.

13.49 Grant Cameron noted he would give further thought over whether to provide the claimants' statements over the Christmas break, considering his concern the Crown sought to have a foot in both the court and ADR camps.

13.50 Grant Cameron noted his main grievance was that he had been consistently denied an ADR process involving a third party. Rather, Crown Law had made its own decisions as to what the process should be and there had been little, if any, accommodation of GCA's views. He noted he had recently taken up this issue in correspondence with the Prime Minister. He noted he would need to have a definitive reply from the Prime Minister as to her position on these issues before he could take them any further with Crown Law.

13.51 On 20 December 2000, Grant Liddell wrote to Dr Skipworth, Dr Tapsell and Professor Brinded informing them that the plaintiffs they were asked to examine were not making themselves available on the current dates set aside for that purpose. In the alternative, Crown Law requested that they carry out desktop reviews of relevant claimants' files.[113]

13.52 On 21 December 2000, Grant Liddell wrote to GCA repeating the Crown's request for particularised statements of claim and relevant medical files. Crown Law also noted media reports that the plaintiffs were "poised" to receive "millions" from the Government. Crown Law reiterated that the Crown had not admitted liability, or that the plaintiffs had any money owing to them, and asked GCA to ensure that inaccurate publicity of this nature did not recur.[114]

13.53 On 15 January 2001, Crown Law wrote to the Ministry of Health, the Department of Child, Youth and Family Services, and the Ministry of Education asking that they ensure they have located any relevant files they may hold in preparation for potential discovery.[115]

13.54 On 31 January 2001, the Investigation Bureau provided a report on its interviews with potential witnesses. It noted that it was clear from the latest interviews that the basis of the claimants' allegations was more likely to relate to "aversion

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112 Letter from Grant Cameron to Crown Law, "Lake Alice", 18 December 2000, OIA.06.05.0024. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

113 Letter from Grant Liddell to Dr Skipworth, Dr Tapsell and Professor Brinded, "Lake Alice litigation: Assessment of plaintiffs' claims to have suffered mental injury", 20 December 2000, OIA.06.05.0014. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

114 Letter from Grant Liddell to Grant Cameron Associates, "Lake Alice", 21 December 2000, OIA.06.05.0005. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

115 Grant Liddell, "Lake Alice cases", 15 January 2001, OIA.07.01.0373. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

therapy" than ECT. Although the plaintiffs referred to all cases of shock treatment as ECT, some of the nurses distinguished "ectonus" or "electronus". The investigator noted "the common thread from the latest interviews has been of a caring environment where dedicated people went out of their way to help these children." A further request to Police for information was unsuccessful, as the Police did not hold records prior to 1980.[116]

14 Political escalation

14.1 On 7 February 2001, Grant Cameron wrote to the Speaker of the House requesting a meeting on Saturday, 10 February 2001.[117] He outlined a brief history of the litigation, and noted that since Labour had formed a new government the matter had been handled through the Prime Minister's department, "although in practical terms it has progressed through a very slow and expensive path under the guidance of the Crown Law Office. I believe there are serious deficiencies both in terms of the process that the Crown Law Office has mapped out, and in terms of the advice that the Prime Minister is currently receiving".

14.2 He noted he had recently suggested to the Prime Minister that she appoint a "personal adviser" to carry out a neutral evaluation of the status of the case and the appropriate path to be taken from there.[118] Mr Cameron asked the speaker for "political guidance".

14.3 DPMC asked the Solicitor-General to comment on Grant Cameron's proposal that independent counsel be asked to undertake a review of the process followed to date in relation to Lake Alice and advise the Prime Minister. On 9 February 2001, Deputy Solicitor-General Ellen France (now her Honour Justice France) provided the Solicitor-General with a memorandum indicating that Crown Law was taking an appropriate approach to the matter in terms of its instructions, although it could be a little more flexible in a few areas without prejudicing the Crown's position.[119]

14.4 Ms France considered that the issues Crown Law wanted sorted out before ADR commenced were issues which did require early resolution. She noted this approach reflected, in part, the Cabinet Committee's acceptance that a two-stage approach be adopted under which direct negotiation was attempted before, if necessary, mediation. It also reflected a concern that the Crown's negotiating position would be weakened by an early commitment to the agreement without resolution of matters such as particularisation of the claims.

14.5 Ms France suggested allowing Mr Cameron to provide the plaintiffs' statements in a particularised form without filing individual statements of claim in order to move the matter along and avoid the cost of filing.

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116 Letter from the Investigation Bureau to Crown Law, "Re: Lake Alice Claims", 31 January 2001, OIA.07.01.0275. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

117 Letter from Grant Cameron to the Speaker, "Lake Alice", 7 February 2001, OIA.07.01.0240. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

118 Letter from Grant Cameron to the Prime Minister, "Lake Alice", 16 December 2000, OIA.07.01.0368; Letter from Grant Cameron to the Prime Minister, "Lake Alice", 18 December 2000, OIA.07.01.0371. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

119 Memorandum from Ellen France to the Solicitor-General, "Lake Alice", 9 February 2001, OIA.07.01.0253. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

14.6 On the issue of psychiatric examinations, Ms France considered that as the draft statements of claim raised psychiatric injury it was difficult to see how negotiations or any ADR process could proceed without some information on this.

14.7 Ms France noted that although Grant Cameron queried Crown Law's commitment to ADR, she did not think that it was a fair criticism or that Crown Law was departing from its instructions. She did, however, consider there was a communications issue in terms of the understanding of Crown Law's position by DPMC. She recommended that the Solicitor-General meet with the Prime Minister to discuss the matter.

14.8 Attached to the memo was a draft letter to GCA from the Prime Minister, indicating matters could move more quickly if Grant Cameron provided particularised statements of claim (with no need for formal filing), and if the plaintiffs underwent psychiatric examinations, with the Government meeting the reasonable costs of such examinations.[120] If the revised particularised claims did not pursue psychiatric injury, the draft letter noted there would be no need for psychiatric examinations. The draft letter noted that these outstanding matters, within Grant Cameron's control, were the only significant stumbling blocks to a settlement process, and that in such circumstances the Prime Minister saw no need for an independent person to review the process to date. It is unclear from the file if the draft letter was ever sent.

14.9 On 10 February 2001, the Speaker met with Grant Cameron as requested.[121] The Rt Hon Jonathan Hunt suggested that the proper course of action was to approach either the Attorney-General, Hon Margaret Wilson, or the Minister of Health.

14.10 On 12 February 2001, GCA provided the Crown Law Office with a list of clients it represented. GCA did not envisage that it would accept instructions from any further clients.[122]

14.11 The same day, Grant Cameron wrote to the Speaker of the House, the Rt Hon Jonathan Hunt MP, thanking him for meeting with him.[123] Mr Cameron stated he had been left with a "take or leave" situation where the Crown Law Office determined for itself what process would be followed, and that his submissions had been largely disregarded. He perceived significant elements of unfairness in Crown Law's proposed process and believed it did not accord with what the Prime Minister and Cabinet would likely expect of a proper ADR process. Grant Cameron suspected the Prime Minister was receiving "filtered" advice, prompting Mr Cameron's suggestion that the Prime Minister seek an independent advisor.

14.12 Mr Cameron agreed with the Speaker that the appropriate course of action was to approach the Attorney-General. He asked if the Rt Hon Jonathan Hunt would

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120 DRAFT letter from the Prime Minister to Grant Cameron, "Lake Alice claims", 9 February 2001, OIA.07.01.0261. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

121 See letter from Grant Cameron to Rt Hon Jonathan Hunt MP, "Lake Alice", 12 February 2001, OIA.07.01.0238. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

122 Letter from Grant Cameron Associates to Crown Law, "Lake Alice", 12 February 2001, OIA.07.01.0233. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

123 Letter from Grant Cameron to Rt Hon Jonathan Hunt MP, "Lake Alice", 12 February 2001, OIA.07.01.0238. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

assist in enabling Mr Cameron to meet with Ms Wilson as soon as was reasonably practicable. He also asked that Mr Hunt mention his request to the Prime Minister. On 13 February 2001, the Speaker passed Mr Cameron's letter to the Attorney-General and sought a discussion on the matter.[124]

14.13 On 14 February 2001, the Solicitor-General, Terence Arnold (now his Honour Justice Arnold), emailed Hamish Hancock confirming that the Attorney-General supported taking a tough line with Grant Cameron.[125] The Attorney-General suggested that Crown Law write a short report for the Prime Minister outlining progress to date, the sticking points and the rationale for the Crown Law approach. She further suggested that Crown Law write a draft letter for the Prime Minister to send in response to Grant Cameron's letters to her.

14.14 On 27 February 2001, Hamish Hancock provided the Solicitor-General with a background memorandum to the Prime Minister and a suggested reply to GCA.[126] The memorandum noted that Grant Cameron had proposed a Cave Creek style arbitration, envisaging a private and informal hearing before a mediation/arbitrator at which claimants could speak, as could medical or other witnesses. Former staff accused of wrongdoing and medical specialists could also respond. There would be no cross-examination, although limited questioning through the mediator/arbitrator would be permitted.

14.15 During the Cave Creek mediation/arbitration many claimants praised this type of process as the first opportunity they had to tell their story to a sympathetic audience.

14.16 To facilitate moving to an ADR process, the Crown required from the claimants' lawyer a complete list of all claimants; a fully particularised statement of claim for each claimant filed in the High Court (to preserve claimants' Limitation Act position, and to allow the Crown to prepare its defence to meet the precise allegations of wrong doing at the hearing); and medical examinations under s 100 Judicature Act 1908, given psychiatric harm was an aspect of many of the claims.

14.17 Mr Hancock noted that, as GCA saw the Crown moving towards a mediation arbitration agreement whilst at the same time subjecting claims to proper investigation, and not surrendering proper defences, the Crown Law team suspected that GCA feared that all or some of their claims may fail at the hearing. They considered the claimants' lawyers may have decided their best chance of gaining the highest payout for their clients was by a direct political approach, by separating the Government from its legal advisors.

14.18 Mr Hancock advised the Crown's lawyers could not recommend payments for legal claims that were not properly proven. Although Crown Law had endeavoured to meet the Government's requirements towards those plaintiffs by accepting in principle a highly streamlined form of dispute resolution, there must still be professional safeguards.

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124 Letter from Rt Hon Jonathan Hunt MP to Hon Margaret Wilson, 13 February 2001, OIA.07.01.0237. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

125 Email from Terence Arnold to Hamish Hancock, "Lake Alice", 9:10 am 14 February 2001, OIA.07.01.0236. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

126 Memorandum from Hamish Hancock to the Solicitor-General, "Lake Alice: A background memorandum to the Prime Minister and a suggested reply to Grant Cameron Associates", 27 February 2001, OIA.07.01.0172. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

14.19 Mr Hancock proposed a "firm but courteous" response to GCA would best ensure they got on with the task at hand.[127]

14.20 On 6 March 2001, Dr Tapsell and Dr Skipworth provided Crown Law with 15 or 16 Lake Alice patient reports.[128]

14.21 On 12 March 2001, Dr Basil James, who personally knew Dr Leeks, provided Crown Law with an opinion regarding Lake Alice Hospital.[129] He noted that any deficiencies in care may have resulted from a lack of adequate funding and training, and stretched resources. His opinion was that Dr Leeks would have made every effort to act in the patients' best interests, with good faith towards them, and respecting the trust and confidence they placed in him. However, "it is difficult to do other than sympathise with [a Lake Alice patient's] perception of the attitudes underlying some of the treatments she was given as being punitive; but I think it doubtful that such attitudes would have emanated from, or been fully perceived, by Dr Leeks."

14.22 On 14 March 2001, Crown Counsel met to discuss how best to communicate with the psychiatrists engaged. It was decided to communicate with them on an individual basis, and to advise only on the law in order for their opinions to be as independent as possible.[130]

14.23 On 15 March 2001, the Solicitor-General provided the Attorney-General with a memorandum[131] and draft letter for the Prime Minister, to discuss before providing to the Prime Minister.[132] The memorandum was along the same lines of the 27 February 2001 draft, although it clarified that Crown Law had adopted its current approach in view of the nature of the allegations made, the amount of public funds at stake, the potential precedent effect of any settlement, the need to "sign off" on any settlement, and the possibility that the claims would not settle and that a Court hearing would be required. The memorandum also proposed the following alternative approaches:

(a) A global settlement could be reached under which the Crown would pay a total sum, and the claimants would arrange between them how that was divided;

(b) The Crown could proceed with the mediation/arbitration, but not maintain its current requirements. It was noted this may result in the Crown assuming significant liabilities in circumstances where it would be difficult or impossible to provide a detailed justification for the incurring of those liabilities.

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127 DRAFT Letter from the Prime Minister to Grant Cameron, "Lake Alice", 27 February 2001, OIA.07.01.0175. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

128 Letter from Dr Tapsell and Dr Skipworth to Grant Liddell, "Reports for Lake Alice claims", 6 March 2001, OIA.07.01.0063. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

129 Letter from Dr Basil James to Grant Liddell, "Claims by Former Patients of Lake Alice Hospital", 12 March 2001, OIA.07.01.0017. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

130 File note by Chris Chapman, "Meeting 14 March 2001", 28 March 2001, OIA.07.02.0356. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

131 Letter from Terence Arnold to the Prime Minister, "Lake Alice: Correspondence from Grant Cameron Associates", 16 March 2001, OIA.07.01.0007. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

132 Letter from Terence Arnold to the Attorney-General, "Lake Alice", 15 March 2001, OIA.07.01.0006. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

14.24 On 29 March 2001, the finalised memo and letter were provided to the Prime Minister.[133] The proposed letter noted that the Solicitor-General had assured the Prime Minister that the Crown Law Office did understand the Government's expectations as to the resolution of the claims and was attempting to achieve them consistently with its obligation to ensure that any outcome is principled and justifiable. It further noted the Prime Minister did not see any need for an independent review. While any settlement process must involve some flexibility, the Government must ultimately be satisfied that any settlement reached could be fully justified. The draft letter stated the Government had gone a considerable distance to expedite the resolution of the claims, but that it must act responsibly in settlements involving public funds. "The need for reliable information and proof underlies the requests from the Crown Law Office of which you complain. I can only confirm that before any settlement can occur the Crown requires a minimum base of information so it can be assured … that the claims for which any payment is made are indeed well-founded".

14.25 The same day, Grant Cameron wrote to the Attorney-General. He noted he had received no response to his request that the Prime Minister appoint an independent person to carry out a neutral evaluation of the case and asked to meet with the Attorney-General on Monday, 1 April 2001.[134]

14.26 On 2 April 2001, Professor Werry provided an opinion on the historical use of paraldehyde.[135] He noted that it was used widely in psychiatry until it was largely replaced by the arrival of the neuroleptics in 1956. It was mostly given orally, and was only administered by injection in emergencies, as such injection was painful. He noted that in his time at the child and adolescent psychiatric unit at Princess Mary Hospital (1972-1995) paraldehyde to his knowledge was never used, and they almost never had to give any kind of medication by injection even in an emergency, in which cases neuroleptics were preferred.

14.27 On 26 April 2001, Jan Fulstow (Executive Assistant to the Solicitor-General) rang Grant Liddell noting that Mr David Caygill, a retired Labour MP, had called the Attorney-General's office concerning Lake Alice. Grant Liddell suspected that Grant Cameron may have made an approach to Mr Caygill hoping that he might be able to use personal influence where Mr Cameron's direct approaches to the Prime Minister had not borne sufficient fruit.[136]

14.28 On 8 May 2001, the Hon Margaret Wilson, Attorney-General, responded to Grant Cameron's letter.[137] Ms Wilson stated she had conveyed to the Prime Minister's office Mr Cameron's wish to receive an early reply to his correspondence, and was advised that his proposal had received and was receiving careful consideration.

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133 Letter from Terence Arnold to the Prime Minister, "Lake Alice: Correspondence from Grant Cameron Associates", 29 March 2001, OIA.07.02.0397; Proposed letter to Grant Cameron from the Prime Minister, "Lake Alice", 29 March 2001, OIA.07.02.0401. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

134 Letter from Grant Cameron to the Attorney-General, "Lake Alice", 29 March 2001, OIA.07.02.0100. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

135 Letter from Professor Werry to Christina Inglis, "Re: Lake Alice: Paraldehyde", 2 April 2001, OIA.07.02.0392. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

136 Email from Grant Liddell to Chris Chapman, Christina Inglis, and Hamish Hancock, "Lake Alice: David Caygill", 3:00 pm 26 April 2001, OIA.07.02.0323. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

137 Letter from Hon Margaret Wilson to Grant Cameron, "Lake Alice", 8 May 2001, OIA.07.02.0084. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

15 Witness briefing

15.1 In the week of 8 May 2001, Crown Law planned a visit to Whanganui and Palmerston North to identify further records, conduct a site visit at Lake Alice, and interview some prospective witnesses.[138]

15.2 On 10 May 2001, Crown Law held a briefing session with Mr A, a nurse at Lake Alice and the father of a former patient (and claimant).[139] Mr A provided his recollections of the Adolescent Unit, including the administration of ECT and paraldehyde. Mr A stated that:

(a) "if you have children running around in a manic way but the child thinks they are going to get ECT, it might stop them doing it"; and

(b) "the doctors would say 'if they play up they can have paraldehyde'".

15.3 Mr A also gave his recollections of a nurse who was in sole charge of the Adolescent Unit in the evenings and was subsequently convicted of sexual offences against children. Mr A did not want to provide evidence.

15.4 On 11 May 2001, Crown Law held a briefing session with Mrs Leeks (Dr Leeks' ex-wife and a former employee at Lake Alice). She confirmed that electric shocks were used as a "controlling device" and to "modify children's behaviour". Mrs Leeks acknowledged that, at times, there were elements of punishment in the use of ECT and considered that the lack of supervision was the key to Lake Alice's downfall. She did not want to give evidence.[140]

16 Settlement agreed

16.1 By 14 May 2001, Mr David Caygill had become involved in the Lake Alice litigation as a facilitator between Crown Law and GCA. During the prior week, the Solicitor-General, Terence Arnold, discussed the possible settlement of the claims with Mr Caygill. The following position was agreed:

(a) The Crown would pay a total sum of $6.5 million to Mr Cameron's clients in full and final settlement of all claims they may have against the Crown arising out of their time at Lake Alice Hospital, with Mr Cameron's legal costs being met from this figure;

(b) An independent expert would be appointed to apportion the $6.5 million among the 97 claimants. The Crown would not participate in this process, but would pay the independent expert's costs, estimated to be in the range of $100-200,000.

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138 Email from Grant Liddell to Garry Walter "Re: Fw: Lake Alice (Garry Walter)", 8 May 2001, OIA.07.02.0166. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

139 File note by Christina Inglis, "Briefing session with [Mr A] on 10 May 2001 at 12pm, at GRO-C GRO-C 15 May 2001, OIA.07.02.0070. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

140 File note by Christina Inglis, "Briefing session with Mrs Leeks on 11 May 2001 at 2.42pm, at her address of GRO-C, 15 May 2001, OIA.07.02.0065. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

16.2 In a draft memo to the Prime Minister dated 14 May 2001,[141] the Solicitor-General noted that the major outstanding issues included how to manage the McInroe and L claims (which were separately filed in Court, and could not be settled from the $6.5 million); and how to manage further claimants that came forward.

16.3 He further noted that Mr Caygill's costs should be met from the $1.5 million set aside for administrative costs, acknowledging that he played an important role in facilitated settlement. Mr Cameron had proposed that his costs to his clients be met from the $6.5 million. It was noted that he may have been conducting the case on what was effectively a contingency fee basis and may therefore receive a large fee.

16.4 In response to the draft, Hamish Hancock noted that it did not refer to the legal basis of liability, and that the investigations, medical examinations and legal research undertaken to date did not establish a clear liability on the Crown.[142] He noted that the incomplete albeit well advanced investigation process had now been obviated by the proposed settlement "which is good in terms of finality for the subject group and avoidance of further legal/administrative expenses. Its obvious disadvantage is that this office cannot say – or be said to say – that $6.5 or $8 or (sic) represents our estimate of the Crown's potential liability. Thus the settlement is at the direction of the Executive rather than on the basis of a CLO legal assessment of potential liability."

16.5 Mr Hancock's feedback was incorporated in the final memorandum to the Prime Minister on 15 May 2001.[143] However, the memorandum further noted that "the Committee's decisions reflected the Government's desire to resolve this potentially difficult and contentious dispute in a fair, principled and expeditious way whether or not the Crown was, in technical legal terms, liable to all claimants. This is the spirit in which the settlement discussions were carried out."

16.6 On 22 May 2001, Mr Caygill provided the Solicitor-General with a draft expert determination agreement.[144]

16.7 On 23 May 2001, Hamish Hancock suggested to the Solicitor-General the following:[145]

(a) That each claimant be required to sign an authorisation to submit to expert determination and deed of agreement as to the division of the global award (attaching a precedent from the Cave Creek mediation);

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141 Terence Arnold, DRAFT Grievances of Former Patients of Lake Alice Hospital: Proposed Settlement", 14 May 2001, OIA.07.02.0081. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

142 Memorandum from Hamish Hancock to the Solicitor-General, "Proposed Lake Alice: Points of principle", 14 May 2001, OIA.07.02.0147. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

143 Memorandum from the Solicitor-General to the Prime Minister, "Grievances of Former Patients of Lake Alice Hospital: Proposed Settlement", 15 May 2001, OIA.07.02.0057. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

144 Email from David Caygill to Terence Arnold, "Lake Alice", 3:00pm 22 May 2001, OIA.07.02.0016. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

145 Handwritten note from Hamish Hancock to Terence Arnold, 23 May 2001, OIA.07.02.0004. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

(b) That the Crown close off the possibility that it get dragged in by some other defendant to a Lake Alice claim, and become the subject of a cross notice for continuation or indemnity; and

(c) That the emotionally charged "perpetrate" be deleted from the draft agreement.

16.8 On 24 May 2001, Hamish Hancock wrote to Terence Arnold with further reflections on Lake Alice following a discussion with Grant Liddell.[146] He considered it was worth repeating to the Attorney-General that the current settlement arrangement was not Crown Law's recommended way of dealing with the claims. The recommended approach, "which was itself streamlined to accommodate the Government's wishes to avoid litigation, had the merit of subjecting each claim to a level of scrutiny by the Crown" (short of the scrutiny that would occur through litigation). Mr Hancock considered the current settlement process shifted the responsibility for screening for valid claimants to GCA. He considered this set a precedent the Crown would not like to have repeated.

16.9 On 29 May 2001, Terence Arnold responded to Hamish Hancock's 14 May 2001 feedback on the memorandum from the Solicitor-General to the Prime Minister.[147] He noted that his memorandum had been amended to make it clear that the settlement did not reflect an assessment by Crown Law of the Crown's potential liability but was rather based on a broader view of the morality of what occurred. He noted he believed that Crown Law had done what it properly could to point out the potential ramifications of this, but that ultimately it was the Government's right to adopt a broader approach than a strictly legal assessment would support. Mr Arnold further noted that, ultimately, the Government would have to live with the consequences.

16.10 The same day, Christine Lloyd (Ministry of Health) called Grant Liddell regarding the progress of the Lake Alice claims (including McInroe and L). On 30 May 2001 she followed the call with a letter.[148]

16.11 Ms Lloyd noted that the Ministry had unexpectedly received a copy of the 15 May 2001 letter and settlement proposal provided to the Prime Minister on 29 May 2001. She noted that a written report on the proceedings for the Ministry and DPMC was now outstanding, and asked Crown Law to provide a full report at its earliest convenience. Health Legal had received an urgent request to provide a written report to the Minister's office the following day concerning the settlement proposal.

16.12 To assist with its report, the Ministry of Health urgently requested the following from Crown Law:

(a) Levels of compensation in similar cases, and how the settlement proposal equated with previous cases;

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146 Handwritten note from Hamish Hancock to Terence Arnold, 24 May 2001, OIA.07.02.0003. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

147 Handwritten note from Terence Arnold to Hamish Hancock, "Lake Alice", 29 May 2001, OIA.07.02.0002. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

148 Letter from Christine Lloyd to Crown Law, "Lake Alice Claims; McInroe; [L]", 30 May 2001, OIA.07.03.0230. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

(b) The mechanics of the appointment of an independent expert to apportion the settlement funds;

(c) On the basis that further claimants may come forward, anticipated further costs of settlement to the Ministry of Health;

(d) Mechanics of the payment out of the $6.5 M to Mr Cameron's clients;

(e) Confidentiality provisions in respect of current and any future claimants.

16.13 On 30 May 2001, the Prime Minister wrote to the Solicitor-General approving settlement of the Lake Alice claims on the basis set out in his letter of 16 May 2001. In a handwritten note, the Prime Minister noted there should be no confidentiality about the amount.[149]

16.14 The following day, Crown Law (Grant Liddell) wrote to Christine Lloyd reporting on progress with the Lake Alice claims.[150] The letter noted that Crown Law had been preparing the Crown's evidence, including obtaining expert reports from Dr Garry Walter on ECT and child psychiatry in New Zealand in the 1970s and psychiatrist examinations of individual claimants' patient files, and commissioning a private investigation firm to locate and obtain statements from a number of former staff and other possible witnesses.

16.15 In terms of levels of compensation in similar cases, Crown Law noted that the Crown had not acknowledged liability in the Grant Cameron proceedings. It expected any exposure would arise for exemplary damages only and would be surprised if a range greater than $20,000 - $40,000 would be ordered in any case where liability was established. This was because, in comparison with other claims where the plaintiffs had suffered a life-imperilling condition, no lasting harm had occurred to the Lake Alice patients.

16.16 Regarding the appointment of an independent expert, the person would be appointed jointly by the Crown and the plaintiffs, which would require agreement between them. Either side would propose a candidate or candidates.

16.17 Regarding anticipated costs of settling new claims, Crown Law considered it was unlikely that further claims could be expected, given the extent of publicity accorded to the Lake Alice claims and the representation GCA was offering. "None of the records that we have reviewed have disclosed to us the total number of patients in the Adolescent Unit for the time that it operated, although the maximum at any one time appears to have been about 50. We would be surprised if the total number exceeded 250, but in any event it is impracticable at this stage to forecast any such anticipated further costs."

16.18 Crown Law understood the settlement deed would propose that no payments be made until every claimant had executed an instrument signifying their concurrence to the settlement agreement, and until the expert determinator had concluded the process of allocation.

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149 Letter from Rt Hon Helen Clark to Terence Arnold, "Proposed Settlement of Lake Alice Claim", 30 May 2001, OIA.07.03.0233. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

150 Letter from Grant Liddell to Christine Lloyd, "Lake Alice claims; McInroe; [L]: your letter of 30 May 2001", 31 May 2001, OIA.07.03.0328. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

16.19 It was proposed that the government would make public the total amount paid to claimants, but individual apportionments would be private.

16.20 On 5 June 2001, the GCA proceedings were heard in the Master's list.[151] The Court was advised that negotiations had progressed well and a political resolution was expected within 6 months. The Master adjourned the cases until 18 December 2001.

16.21 On 8 June 2001, the Solicitor-General provided Hamish Hancock with a memorandum[152] noting he had received signed confirmations from the Ministers comprising the Cabinet sub-committee on Lake Alice authorising settlement on the terms proposed. He then left it to Mr Hancock to finalise the terms of reference for the independent expert with Grant Cameron and to do whatever was necessary to facilitate that process. The Prime Minister had instructed that there was to be no confidentiality clause in relation to the settlement.

16.22 On 14 June 2001, Grant Cameron wrote to the Solicitor-General enclosing a list of the claimants represented by GCA and who would take part in the proposed expert determination.[153] Mr Cameron advised he would close the group upon a formal offer of settlement being received. He noted that, were any party to come forward after that point, GCA would not act for them, given Mr Cameron's commitments in other areas.

16.23 He advised that Sir Rodney Gallen had confirmed his availability and willingness to act as Determinator in the matter. He had already perused a copy of the draft agreement and was happy with its terms. He suggested that the Crown communicate directly with Sir Rodney Gallen to finalise his remuneration.

16.24 On 15 June 2001, Grant Cameron wrote to Crown Law enclosing draft authorisation forms for the claimants to sign to agree to settlement.[154]

16.25 On 21 June 2001, Grant Cameron wrote to the Solicitor-General noting that Sir Rodney Gallen had not heard from Crown Law about the proposed expert determination, and that he had received no formal offer of settlement. He noted that Sir Rodney Gallen would prefer to resolve the Lake Alice matter before sitting in the Fiji Court of Appeal in the week commencing 6 August 2001.[155] Grant Cameron forwarded this letter to Hamish Hancock the same day.[156]

16.26 On 25 June 2001, Hamish Hancock provided the Solicitor-General with a handwritten note outlining his proposed amendments to Grant Cameron's form

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151 Email from Grant Liddell to Christine Lloyd, "Lake Alice claims (GCA) and McInroe and [L]: Master's list 5 June 2001", 5 June 2001, OIA.07.03.0191. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

152 Memorandum from Terence Arnold to Hamish Hancock, "Lake Alice", 8 June 2001, OIA.07.03.0190. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

153 Letter from Grant Cameron to the Solicitor-General, "Lake Alice", 14 June 2001, OIA.07.03.0178; List of Lake Alice claimants, 14 June 2001, OIA.07.03.0180. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

154 Letter from Grant Cameron to Crown Law, "Lake Alice", 15 June 2001, OIA.07.03.0169. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

155 Letter from Grant Cameron to the Solicitor-General, "Lake Alice", 21 June 2001, OIA.07.03.0173. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

156 Fax from Grant Cameron to Hamish Hancock, "Lake Alice", 21 June 2001, OIA.07.03.0175. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

"Agreement and Authority for Signature".[157] He also sought his agreement to liaise with Sir Rodney Gallen over finalising the agreements and his remuneration.

16.27 Mr Hancock understood the Ministry of Health wanted GCA's fees to be made public, but this did not form any part of the arrangements for settlement agreed with the Prime Minister's Office. He asked whether the Solicitor-General wanted this potential complication introduced at that stage.

16.28 The same day, Mr Arnold responded to Hamish Hancock's note.[158] He noted he had discussed with Sir Rodney Gallen the question of remuneration, and that they had reached an agreement. Mr Arnold noted he had written to Grant Cameron advising him that agreement had been reached and had indicated that two additional claimants (McInroe and L) should be included in the process. Mr Arnold left it for Mr Hancock to agree the terms of reference and make whatever other arrangements that needed to be made from the Crown's side. He indicated he was happy with Mr Hancock's suggested amendments to the "Agreement and Authority for Signature".

16.29 Mr Arnold's letter to Grant Cameron was sent on 26 June 2001.[159]

16.30 Grant Cameron wrote to Crown Law the same day, responding to the Solicitor-General's letter and following a discussion with Hamish Hancock that afternoon.[160] Mr Cameron indicated he had been loosely aware of the two further claimants but had had "no direct communications with that faction for at least 2 years". To commence the expert determination process, Grant Cameron indicated he would need a letter from the Crown confirming its offer to pay the $6.5 million by way of global sum to his claimants and that the Crown would independently bear the costs of the expert determination. Further, the letter would confirm that the draft agreement and annexure were acceptable to Crown Law. As soon as such letter was received, Grant Cameron indicated he would send relevant materials to Sir Rodney Gallen for him to commence the expert determination process, while he worked on obtaining the client "acceptances" and preparing a hearing schedule.

16.31 In relation to the Crown utilising Sir Rodney Gallen as a mechanism for settling the other two claims, Grant Cameron had no objection but saw it as "a matter quite independent of this case". Mr Cameron stated that discussions between Crown Law and those two claimants "have no bearing on resolution of this matter so I would object to our process being held up should discussions in the other direction not be included. Indeed, I imagine the news that our own determination process had commenced, might encourage early resolution of the other affair".

16.32 On 27 June 2001, Hamish Hancock responded to Grant Cameron confirming that the two other claimants were "the two separately represented Auckland

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157 Handwritten note from Hamish Hancock to Terence Arnold, 25 June 2001, OIA.07.03.0153. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

158 Memorandum from Terence Arnold to Hamish Hancock, "Lake Alice", 25 June 2001, OIA.07.03.0155. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

159 Letter from Terence Arnold to Grant Cameron, "Lake Alice", 26 June 2001, OIA.07.03.0147. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

160 Letter from Grant Cameron to Crown Law, "Lake Alice", 26 June 2001, OIA.07.03.0163. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

plaintiffs".[161] Mr Hancock noted that it seemed Grant Cameron's strong preference was that if Sir Rodney Gallen was to be used to deal also with the two separate claimants then the Crown would need to deal with this as a separate matter to the Grant Cameron claimants. He provided Grant Cameron with proposed amendments to the "agreement and authority for signature" and "agreement to submit to expert determination" documents. Mr Hancock further asked Grant Cameron to confirm that he was suggesting that the process begin before every claimant had signed up.

16.33 Grant Cameron responded to Hamish Hancock's letter the same day.[162] He confirmed his preference for the Auckland plaintiffs to be dealt with separately. He accepted all the suggested amendments to the documents.

16.34 He confirmed that GCA considered the process could commence without all client signatures actually being in hand, as they had reasonable cause to believe all claimants would accept, and Sir Rodney Gallen was willing to commence reading files as soon as they were forwarded to him. "In this fashion the determination process will practically commence on receipt of your letter and not on receipt of the client's acceptances". This was in order to save time, considering Sir Rodney Gallen's preferred timeframe.

16.35 On 28 June 2001, GCA faxed the revised agreements to Hamish Hancock.[163]

16.36 On 4 July 2001, the Solicitor-General sent GCA a formal letter offering a global settlement sum of $6.5 million. The Crown required as an acceptance of the offer the formal signed agreement to submit to expert determination by all 96 claimants, committing themselves individually and collectively to the full and final settlement of their claims through the process set out in the agreed agreements.[164]

16.37 On 12 July 2001, Grant Liddell received a phone call from Christine Lloyd (Ministry of Health) requesting an update on negotiations. Mr Liddell noted that as far as he was aware they were progressing satisfactorily, apart from some media flurries around Ministers' offices. Crown Law assumed GCA were busy attempting to secure their clients' signatures to the settlement. Christine Lloyd asked for a copy of the draft settlement. She mentioned a need for finality (which Grant Liddell indicated was agreed) and the possibility of the determinator deciding that a nil award was appropriate in some cases. Grant Liddell asked Hamish Hancock to contact Christine Lloyd to address her queries and pass on a copy of the draft settlement agreement.[165]

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161 Letter from Hamish Hancock to Grant Cameron, "Lake Alice", 27 June 2001, OIA.07.03.0143. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

162 Letter from Grant Cameron to Hamish Hancock, "Lake Alice", 27 June 2001, OIA.07.03.0139. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

163 Fax from Grant Cameron Associates to Hamish Hancock, "Lake Alice", 28 June 2001, OIA.07.03.0130. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

164 Letter from Terence Arnold (Solicitor-General) to Grant Cameron Associates, "Lake Alice", 4 July 2001, OIA.07.03.0086. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

165 See email from Grant Liddell to Hamish Hancock, "Lake Alice: request for update from Ministry of Health: Christine Lloyd", 12 July 2001, OIA.07.03.084. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

17 Concerns raised regarding settlement

17.1 On 13 July 2001, a former patient of Lake Alice Hospital (Mr B) wrote to the Prime Minister.[166] Mr B noted GRO-B GRO-C GRO-C was a barrister who attempted to obtain some form of redress GRO-B GRO-B for the Lake Alice patients as a group. After being unable to make further headway due to his limited resources, he passed the matter to GCA. Mr B noted that Mr Cameron had "apparently" met with little success until the intervention of the Prime Minister, the Rt Hon Helen Clark.

17.2 Mr B expressed his concern and disappointment that a call had not gone out for further Lake Alice patients to come forward.

17.3 Mr B noted that Mr Cameron was not representing them, or indeed all the potential claimants from Lake Alice. Mr B noted Grant Cameron Associates were aware that there were other excluded patients. Mr Cameron had refused to offer any assurance about the sanctity of medical records, affidavits, and other personal information, further noting there could be no guarantee of confidentiality, and that a variety of people would have unfettered access.

17.4 Mr B indicated the current negotiations were being kept secret, with GCA denying there were any negotiations and that there was an offer on the table. Further, Mr Cameron refused to entertain any participation by anyone not originally or currently on GCA's client list.

17.5 Mr B noted various concerning aspects of GCA's management of claims they had heard, although they could not confirm the veracity of these concerns. The class action was represented as a pro bono public service. Then a $100 per head fee was requested to retain the services of a barrister. A contract was then promulgated with a "contingency basis" fee for the legal team, apparently starting at around 15% and gradually escalating to 40%. The claimants were apparently asked to sign agreements without any guidance as to the settlement amount and requiring that the claimants agree to the $100 fee, 40% of the award for fees, and additional disbursements and barristers' fees. Mr B was also concerned that Grant Cameron proposed acting as an "amicus curiae" to "assist" Sir Rodney Gallen.

17.6 Mr B considered GCA were in a position of conflict of interest, given their stake in any award given. Mr B was aware that the global settlement sum was $6.5 million, and that there were 95 remaining clients.

17.7 Mr B considered that there was no genuine impediment to extending the settlement to cover all former Lake Alice patients. He noted that Ms Simmonds of GCA had suggested a second complete case would be required, and that GCA were content to "stick with those clients who [had] borne the burden for [those] past 3-4 years". Mr B suggested that the global settlement sum could be increased on a pro-rata basis to bring in those outside the GCA client group; or, alternatively, that the Crown could appoint an advocate to represent the interests of those excluded Lake Alice patients. Mr B suggested that GCA should not be the assisting counsel for Sir Rodney Gallen due to their partiality and vested interest.

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166 Letter from [Mr B] to Rt Hon Helen Clark, "Lake Alice children's "Settlement Offer"', 13 July 2001, OIA.07.03.0055. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

17.8 Mr B indicated he was willing to participate in a settlement process, on the condition that they "be protected from the prying eyes of all and sundry".

17.9 In an addendum, Mr B indicated that a Grant Cameron claimant had provided him with the settlement information. He noted that strenuous efforts had been made to find the person "leaking" to them. Mr B noted the claimant was ready to come forward, and that the claimant felt they had been forced under duress to sign Grant Cameron's agreement to avoid missing out altogether.

17.10 On 12 July 2001, the media reported that the Government had decided to pay compensation to the former residents of Lake Alice. The story noted the residents had until that day to accept, and that by accepting the process, the claimants would accept it as full and final settlement of their cases. Those who did not would have to take separate legal action.[167]

17.11 On 16 July 2001, Sonja Cooper wrote to Chris Mathieson (Crown Law) indicating she had received instructions from a Grant Cameron Associates claimant, and asking if Mr Mathieson could indicate which Crown Counsel was dealing with the matte so that she may correspond directly with them.[168] Ms Cooper's letter was forwarded to Grant Cameron later that day.[169]

17.12 The same day, Ian Carter received a call from Jim Boyack, a barrister in Auckland. Mr Boyack said he represented an individual Lake Alice claimant who was not happy with Grant Cameron's representation.[170]

17.13 On 18 July 2001, GCA wrote to Crown Law indicating that it looked as though they had all the necessary claimant signatures to settle the matter and asking who would sign the agreement on behalf of the Crown.[171]

17.14 Hamish Hancock replied later that day, asking that GCA forward all the original signatures to Crown Law for verification. Once that was complete, GCA could then forward the Agreement to Submit to Expert Determination to the Solicitor-General for signing on behalf of the Crown.[172]

17.15 On 25 July 2001, Grant Cameron wrote to Hamish Hancock indicating GCA had received 100% acceptance of the Crown's offer during the first week after the offer was circulated.[173] Mr Cameron had signed the agreement to submit to expert determination on behalf of his clients, but he had not passed it on to Crown Law as he preferred to await the original copy of signed acceptances from three parties offshore. Sir Rodney Gallen had been working on the first

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167 See email from Jan Fulstow to Grant Liddell, "Re: Lake Alice", 9:38 am 13 July 2001, OIA.07.03.0091; and Article by Antony Paltridge, "'Tortured' children offered $6 million", 13 July 2001, The Evening Post, OIA.07.03.0092. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

168 Letter from Sonja Cooper to Chris Mathieson, "[Mr C]", 16 July 2001, OIA.07.03.0081. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

169 Letter from Grant Liddell to Sonja Cooper, "[Mr C]", 17 July 2001, OIA.07.03.0082; Letter from Grant Liddell to Grant Cameron Associates, "[Mr C]", 17 July 2001, OIA.07.03.0112. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

170 Memo from Ian Carter to Grant Liddell re: phone call, 5:00pm 16 July 2001, OIA.07.03.0089. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

171 Letter from Grant Cameron Associates to Crown Law, "Lake Alice Settlement", 18 July 2001, OIA.07.03.0070. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

172 Letter from Hamish Hancock to Grant Cameron Associates, "Lake Alice", 18 July 2001, OIA.07.03.0076. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

173 Letter from Grant Cameron to Hamish Hancock, "Lake Alice", 25 July 2001, OIA.07.03.0012. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

batch of files and final arrangements were in hand to establish the hearing dates.

17.16 On 26 July 2001, Crown Law received an email from Christine Lloyd repeating her request for a copy of the settlement proposal.[174] She noted that there had been a leak to the Evening Post about the settlement, and that she hoped the Ministry of Health "[did] not have to rely on this as our source of information about details of the settlement negotiations!" Ms Lloyd also asked whether McInroe and L had indicated they might join in the settlement.

17.17 Ms Lloyd indicated she had received a copy of the letter from Mr B to the Prime Minister dated 13 July 2001, and asked that Crown Law advise the following:

(a) Whether the settlement offer had been accepted by any claimants;

(b) Whether the current proposal contained any controls on the legal fees to be extracted from the settlement proceeds;

(c) In light of the issues and allegations raised regarding Mr Cameron and his relationship with his clients, what was Crown Law's position about continuing "settlement" if there are risks that any payment to claimants was going to be accompanied by another grievance in relation to their legal advice and the fees taken, in addition to a public perception that the Government has "approved" the fees or the means by which such fees could be collected from a vulnerable group of people?

(d) What steps were to be taken, and when, about advising other potential claimants not represented by Mr Cameron of the ability to use the process, given Mr Cameron's potential conflict of interest as disclosed in the former patient's letter?

17.18 Christine Lloyd indicated she and Grant Adam would like to meet with Crown Law to discuss the concerns raised in the former patient's letter.

17.19 A meeting was arranged for the following day.[175] At that meeting, Crown Law explained that the Solicitor-General had largely handled the negotiation. GCA had requested an independent barrister, but the Solicitor-General considered one unnecessary. Crown Law had explained the mediation/arbitration procedure, but "GCA refused to play ball". At this stage, Mr Caygill had brokered a deal with the Solicitor-General in line with the Prime Minister's expectations, not Crown Law procedures. The Prime Minister was entitled to prefer her solution, and a deal was made for a global, class-based settlement. Crown Law's message for the Ministry of Health was that a deal had been reached. The Ministry of Health and Crown Law approach had been superseded, and politicians were entitled to do so.

17.20 The Ministry of Health noted there may be further claimants. Hamish Hancock noted they would deal with further cases as they arose. Grant Liddell noted there were no exact numbers of patients, but that there were unlikely to be

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174 Email from Christine Lloyd to Grant Liddell, "Lake Alice – Urgent attention", 2:13 PM 26 July 2001, OIA.07.03.0025. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

175 Email from Grant Liddell to Grant Adam, "RE: Lake Alice – Urgent attention", 5:04 PM 26 July 2001, OIA.07.03.0039. See handwritten notes of the meeting at OIA.07.03.0020. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

significantly more. He noted new cases would have to be dealt with on their merits.

17.21 Crown Law noted that GCA's fees were a matter between GCA and their clients. The Crown had agreed to pay Sir Rodney Gallen's costs, but couldn't dictate as to GCA's costs.

17.22 Hamish Hancock noted the Solicitor-General had distributed the agreement to a limited number of people, but that Christine and Grant Adam could contact Jan Fulstow for a copy.

17.23 Crown Law had been told by GCA that everyone had signed, but Hamish Hancock indicated he didn't necessarily believe this.

17.24 Crown Law noted the global sum would be disclosed, but that Crown Law hadn't dictated arrangements between GCA and their clients. $6.5 million was agreed for the claimants, with Sir Rodney Gallen undertaking individual assessments. Sir Rodney Gallen's fee would be paid for by the Crown on top of that sum.

18 Expert determination

18.1 On 7 August 2001, Grant Cameron wrote to the Solicitor-General enclosing the settlement agreement.[176] He noted that the number of claimants had dropped from 96 to 95, but that he had spoken with David Caygill who confirmed that the agreement with the Crown was for a global sum and that no reduction in quantum was contemplated should claimants "fall by the wayside". Mr Cameron asked the Solicitor-General to execute and return a copy of the agreement.

18.2 On 15 August 2001, the Solicitor-General wrote to Sir Rodney Gallen confirming his daily remuneration and the provision of secretarial assistance.[177]

18.3 On 21 August 2001, Crown Law compared the schedule in the settlement agreement against the two statements of claim and the 12 February 2001 list of claimants and identified several discrepancies.[178]

18.4 The same day, Crown Law sent an email to Grant Adam (Ministry of Health) confirming that, contrary to newspaper reports, no settlement with GCA's plaintiffs had yet been effected, and would not be that day. Crown Law was still in the process of checking details of the plaintiffs and claimants, and until that process was completed, the Solicitor-General would not execute the settlement documents.[179]

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176 Letter from Grant Cameron to the Solicitor-General, "Settlement of Lake Alice case", 7 August 2001, OIA.07.03.0009. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

177 Letter from Terence Arnold to Sir Rodney Gallen, "Lake Alice", 15 August 2001, OIA.07.04.0442. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

178 Memorandum from Margaret White to Grant Liddell, "Lake Alice – Agreement to submit to expert determination", 21 August 2001, OIA.07.04.0362. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

179 Email from Grant Liddell to Grant Adam, "Lake Alice: your ministry's contingent liabilities: HEA007/306", 10:25 AM 21 August 2001, OIA.07.04.0424. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

18.5 On 24 August 2001, Crown Law wrote to GCA asking them to clarify the details of particular claimants.[180] Grant Cameron responded on 27 August 2001.[181]

18.6 On 29 August 2001, The Evening Post reported that Sir Rodney Gallen had begun hearing from Lake Alice claimants on 28 August 2001. Grant Cameron commented that the face-to-face meetings should be completed that week, and that about half of the 95 claimants had asked to speak with Sir Rodney Gallen. He further said that Sir Rodney Gallen hoped to have his report completed in early October.[182]

18.7 On 30 August 2001, Christine Lloyd emailed Grant Liddell asking about the Evening Post article the night prior. She noted it appeared that Grant Cameron's clients had accepted the terms of settlement, and asked Grant Liddell for further information regarding the settlement and Sir Rodney Gallen's hearing. Grant Liddell responded that he was surprised by the story, and that the agreement had not yet been executed by the Solicitor-General as there remained issues concerning the identity or signing capacity of some of the signatories. He noted Crown Law was in correspondence with GCA about those matters and would have expected that Grant Cameron might have informed Crown Law concerning Sir Rodney Gallen's activities. Given that the agreement only provided that the Crown would be notified of the completion of the apportionment and not the detailed distributions, Grant Liddell considered it was not significant that the process had commenced before the agreement was finalised. Grant Liddell noted that of the 88 original plaintiffs, 9 were not participating in the settlement, and of the 30 persons named by GCA as claimants in February 2001, 15 were not participating.[183]

18.8 The same day, Sonja Cooper wrote to Grant Liddell confirming that Mr C was no longer a client of Grant Cameron, and that she had had difficulty obtaining his files from GCA.[184] Ms Cooper understood a proposal had been put forward by the Crown and she asked if she could be brought up to date in relation to that proposal so she could advise Mr C. She also asked for a copy of the statements of claim and defence in the proceedings.

18.9 On 31 August 2001, Crown Law wrote to Grant Cameron regarding matters that needed clarification (e.g. documentary evidence of authorities for a claimant with an intellectual disability, and confirmation of those claimants whose names had changed).[185]

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180 Letter from Crown Law to Grant Cameron Associates, "Lake Alice claims – agreement to submit to expert determination", 24 August 2001, OIA.07.04.0385. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

181 Letter from Grant Cameron to Grant Liddell, "Lake Alice claims: Agreement", 27 August 2001, OIA.07.04.0348. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

182 Media Article, "Lake Alice claims heard", The Evening Post, 29 August 2001, OIA.07.04.0365. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

183 Email from Grant Liddell to Christine Lloyd, "Re: Lake Alice", 8:59 30 August 2001, OIA.07.04.0339. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

184 Letter from Sonja Cooper to Grant Liddell, "[Mr C]", 30 August 2001, OIA.07.04.0368. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

185 Letter from Grant Liddell to Grant Cameron, "Lake Alice claims – agreement to submit to expert determination", 31 August 2001, OIA.07.04.0346. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

18.10 On 3 September 2001, Grant Liddell wrote to GCA asking for confirmation of when Mr C ended his instructions with them.[186]

18.11 On 14 September 2001, Sir Rodney Gallen wrote to the Solicitor-General indicating he had completed and signed the determination of the allocation of funds for distribution for the Lake Alice claimants.[187] This had been forwarded to GCA, which he assumed would proceed to distribution.

18.12 He noted that "Almost every complainant expressed concern that no-one in authority had been prepared to believe their complaints in the past or to take any action to protect them. They almost all seek an apology for what occurred".

18.13 Sir Rodney Gallen noted he was sufficiently disturbed at the material disclosed to him that he considered it necessary to prepare a report, which he had sent to GCA for distribution, in the hope that it may go some distance towards allaying the claimants' concern. He enclosed a copy of this report.

18.14 Sir Rodney Gallen further noted that the complainants all expressed concern that what happened to them should not happen again. He suggested thought might be given to making it a requirement on the admission of a child to such an institution that there be an obligation to inform the Commissioner for Children.

18.15 He further asked that some consideration be given to some further sum being considered to enable access to counselling for complainants where that was indicated.

18.16 On 18 September 2001, Grant Cameron wrote to Crown Law regarding Sir Rodney Gallen's completed determination, and asking the Crown to forward the executed agreement and payment of the $6.5 million.[188] Grant Cameron indicated he provide his clients with their individual cheques and Sir Rodney Gallen's comments on 4 October 2001.

18.17 He noted that Sir Rodney Gallen agreed that a Crown apology would be appropriate. Grant Cameron suggested that the Crown issue a media statement expressing regret for the events. He suggested that the vast majority of his clients perceived this settlement to have come about through the direct intervention of the Prime Minister and that it was her personal integrity that had enabled final resolution. He urged the Crown to consider that any statement come from the Prime Minister.

18.18 Grant Cameron suggested that GCA and the Crown coordinate before any media engagement.

18.19 In relation to any further cases, Grant Cameron noted he had been approached by about 8 other Lake Alice patients who had not previously come forward. He noted that further people may come forward as a result of the media coverage of the settlement. Grant Cameron offered the services of GCA in the event the Crown determined to address the small batch of remaining cases.

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186 Letter from Grant Liddell to Grant Cameron Associates, "[Mr C]", 3 September 2001, OIA.07.04.0380. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

187 Letter from Sir Rodney Gallen to the Solicitor-General, 14 September 2001, OIA.07.05.0051. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

188 Letter from Grant Cameron to The Solicitor-General, "Lake Alice", 18 September 2001, OIA.07.05.0253. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

18.20 The same day, Grant Liddell advised the Solicitor-General that the agreement to submit to expert determination was ready for his execution.[189] On 19 September 2001, the agreement was forwarded to the Ministry of Health,[190] and on 20 September 2001 a copy of the executed agreement was provided to GCA.[191]

18.21 On 21 September 2001, Grant Liddell advised the Attorney-General the Solicitor-General had executed the settlement agreement, and the Ministry of Health was about to pay the settlement sum of $6.5 million to GCA.[192]

18.22 Mr Liddell noted that Sir Rodney Gallen's report was in "very damning terms", and that it proposed that the Crown make an apology to whose persons who suffered while at Lake Alice in the 1970s.

18.23 He further noted that Sir Rodney Gallen's report should be treated as confidential, and should not be disclosed to any other claimants or made publicly available until the Crown had been able to resolve other outstanding claims. Grant Liddell noted Grant Cameron's willingness to coordinate media reports in the first week of October.

18.24 Crown Counsel were to meet on 24 September 2001 with officials from the Ministry of Health and DPMC to consider Sir Rodney Gallen's report and to formulate recommendations for proceeding to deal with other claims.

18.25 On 21 September 2001, Grant Liddell wrote to Grant Cameron asking for confirmation that he held discontinuances for those clients participating in the settlement, and for clarification of those plaintiffs Grant Cameron continued to act for. Mr Liddell indicated the settlement money would be paid once they had received confirmation of the discontinuances.[193]

18.26 GCA responded that same day, indicating that discontinuances were not a prerequisite to payment of the award, and that he would provide the requested information and discontinuances after payment of the award.[194]

18.27 On 24 September 2001, Grant Liddell wrote to GCA advising that the Ministry of Health had transferred the settlement funds.[195] He thanked them for undertaking to attend to the filing and service of the discontinuances. He also confirmed that Ministers would seek to coordinate media matters with GCA.

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189 Memorandum from Grant Liddell to the Solicitor-General, "Finalisation of agreement to submit to expert determination (HEA007/306)", 18 September 2001, OIA.07.05.0264. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

190 Letter from Grant Liddell to the Ministry of Health, "Lake Alice – Agreement to Submit to Expert Determination", 19 September 2001, OIA.07.05.0266. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

191 Letter from Grant Liddell to Grant Cameron Associates, "Lake Alice", 20 September 2001, OIA.07.05.0231. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

192 Letter from Grant Liddell to the Attorney-General, "Lake Alice Settlement", 21 September 2001, OIA.07.05.0047. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

193 Letter from Grant Liddell to Grant Cameron, "Lake Alice", 21 September 2001, OIA.07.05.0190. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

194 Letter from Grant Cameron Associates to Grant Liddell, "Lake Alice", 21 September 2001, OIA.07.05.0192. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

195 Letter from Grant Liddell to Grant Cameron Associates, "Lake Alice", 24 September 2001, OIA.07.05.0157. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

18.28 On 28 September 2001, Grant Liddell wrote to Philippa Cunningham[196] and Sonja Cooper[197] indicating it was likely a proposal would be put to further claimants that was modelled on the GCA process, but that he was unable to provide further information at that time.

18.29 The same day, Crown Law wrote to the Attorney-General regarding the conclusion of the settlement of claims of GCA's clients, and the second phase process for other claimants.[198] Grant Liddell indicated he had received instructions following a meeting with officials from the Ministry of Health and DPMC on next steps.

18.30 Mr Liddell noted that the Prime Minister and the Minister of Health would make an announcement regarding the settlement after Cabinet met on Monday 1 October 2001.

18.31 Grant Liddell advised that, if release of Sir Rodney Gallen's reports was sought, they should not be disclosed at that time, given a further round of claims was expected, and release could prejudice the management and resolution of those claims if a highly damaging report was made public before those claims were all in and considered.

18.32 The Ministry of Health was preparing a Cabinet paper to seek necessary authorities, including further funds, to utilise a variant of the model used for the Grant Cameron claims. Sir Rodney Gallen had agreed to act as expert determinator again, and David Collins QC was willing to act as counsel assisting Sir Rodney Gallen to facilitate the management and submission of the claims. The Crown would meet both Sir Rodney Gallen and David Collins QC's fees. Known claimants would be invited to agree to participate in the process. Authority would also be sought to advertise for any new claims.

18.33 The same day, the Ministry of Health provided a background briefing on Lake Alice to the Prime Minister, the Minister of Health, and the Associate Ministers of Health.[199] The paper backgrounded the history of the claims, issues in respect of the claimants' treatment at Lake Alice, and changes since 1978 that meant a repeat of what occurred at Lake Alice would be extremely unlikely.

18.34 The paper considered an apology appropriate, but noted it needed to be managed in a way that minimised the risk of prejudice to any future settlements or litigation, including current litigation with a small number of other claimants. It was recommended that the Ministers make a general apology for what occurred but state that they would be apologising personally in writing to each of the claimants who were involved in the settlement.

18.35 The same day, Terence Arnold indicated he had spoken to Sir Rodney Gallen, who was prepared to deal with the remaining cases and had no problem with

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196 Letter from Grant Liddell to Philippa Cunningham, "McInroe v Leeks & Attorney-General; [L] v Leeks & Attorney-General", 28 September 2001, OIA.07.05.0006. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

197 Letter from Grant Liddell to Sonja Cooper, "[Mr C]", 28 September 2001, OIA.07.05.0007. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

198 Letter from Grant Liddell to the Attorney-General, "Lake Alice Claims 1) Conclusion of settlement of claims of Grant Cameron Associates' clients 2) Second phase process for other claimants", 28 September 2001, OIA.07.05.0013. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

199 Ministry of Health, "Background briefing on Lake Alice for Ministers only", 28 September 2001, OIA.07.05.0019. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

the appointment of a counsel assisting. Hamish Hancock and Grant Liddell considered David Collins QC would be an appropriate person to assist and had canvassed his possible appointment with the Ministry of Health.[200]

18.36 On 3 October 2001, Grant Cameron wrote to Crown Law again offering to assist in the resolution of the outstanding Lake Alice cases.[201] Grant Cameron contemplated whether or not to issue a media release immediately following the Prime Minister's to the effect that any further persons who perceived themselves to have a claim should contact his office no later than Friday 16 October. He noted he intended discussing those issues with David Caygill and seeking his guidance. The letter was copied to Grant Adam and Christine Lloyd on 4 October 2001.[202]

19 Public announcements and second round process

19.1 On 7 October 2001, the Prime Minister and the Minister of Health released a media statement announcing the Crown settlement with 95 former Lake Alice patients.[203] The Prime Minister and Minister of Health apologised to the 95 former patients on behalf of the Crown, and stated a personal apology would be conveyed to all claimants with whom settlements had been reached. They further said "Whatever the legal rights and wrongs of the matter, and whatever the state of medical practice at the time, our government considers that what occurred to these young people was unacceptable by any standard, in particular the inappropriate use of electric shocks and injections".

19.2 The statement noted that there were others who may have been subject to similarly unacceptable events and who had not been part of this settlement. The Prime Minister and the Minister of Health said their concerns would be considered as they came forward.

19.3 On 8 October 2001, Grant Cameron wrote to the Solicitor-General noting he had discussed the matter of outstanding Lake Alice clients with David Caygill, and in light of the Government's position, determined there was no good reason to announce a cut-off date for claimants to come forward.[204] Mr Cameron stated he had amended his media release to suggest any persons who might feel that they have acclaim should contact his office "promptly".

19.4 The same day, the Minister of Health released a media statement noting that former Lake Alice patients were to receive Crown-funded aid.[205] She said that former Lake Alice patients who had yet to bring forward a claim with the Crown should contact the Ministry of Health as soon as possible in order to have their

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200 Email from Grant Liddell to Terence Arnold, "Re: Lake Alice", 2:06 PM 28 September 2001, OIA.07.05.0028. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

201 Letter from Grant Cameron to the Solicitor-General, "Lake Alice", 3 October 2001, OIA.08.01.0283. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

202 Letter from Grant Liddell to the Ministry of Health, "Lake Alice", 4 October 2001, OIA.08.01.0309. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

203 Media Statement by the Prime Minister and the Minister of Health, 'Crown settles with 95 former Lake Alice patients', 7 October 2001, OIA.08.01.0256. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

204 Letter from Grant Cameron to Terence Arnold, "Lake Alice", 8 October 2001, OIA.08.01.0231. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

205 Media Statement by the Minister of Health, "Former Lake Alice patients to receive Crown-funded aid", 8 October 2001, OIA.08.01.0098. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

claims heard. The Government had assigned David Collins QC as a Crown-appointed lawyer to handle those former patients' claims and retired High Court Judge Sir Rodney Gallen would be retained to hear the new claims.

19.5 A similar media statement in relation to mental health week was released the same day by the Hon Tariana Turia, Associate Minister of Health.[206] She similarly urged those who had not yet come forward to do so, noting the appointments of David Collins QC and Sir Rodney Gallen. Former child patients at Lake Alice wishing to check their eligibility could look at an information sheet on the Ministry of Health's website or call the coordinator.

19.6 The same day, the Solicitor-General replied to Grant Cameron's letter dated 3 October 2001.[207] He noted his surprise at Grant Cameron's offer to assist, given Mr Cameron had advised in his letter of 14 June 2001 that he had no interest in acting for any further claimants who might come forward as a result of the settlement announcement. The Solicitor-General noted he had arranged for Sir Rodney Gallen to resolve any further claims that might come forward, with Dr Collins QC assisting.

19.7 Quite apart from Grant Cameron's earlier advice, the Solicitor-General did not this that it was appropriate that he act for any further claimants. At least three claimants had their own lawyers. If Grant Cameron were to act for a further substantial group of claimants, claimants not represented by him may have felt some concern given that he was privy to the settlements made with other claimants whereas their lawyers were not. In addition, if he were to be involved there would be duplication with what the Solicitor-General envisaged counsel assisting would do.

19.8 The Solicitor-General was concerned about media reports that Grant Cameron was encouraging people with outstanding claims to contact his office, as it cut across the process he had put in place. He asked that Grant Cameron make no further such statements and refer details of claimants who contacted his office to Crown Law so that they could be passed on to Dr Collins QC.

19.9 On 9 October 2001, Grant Cameron wrote to the Solicitor-General regarding the potential settlement process with the outstanding Lake Alice claimants.[208] He noted that Sir Rodney Gallen's comments appeared to have placed the Crown in a position where it had to face up to the enormity of the events at Lake Alice. He considered that, if the Crown wished to speedily resolve outstanding cases that arose, GCA were better positioned than any other party to carry out that function. He noted the Crown's proposal to appoint Counsel to Assist and considered that role to precisely be the role already carried out by GCA in relation to the earlier resolution process.

19.10 He asked for elaboration of Crown Law's suggestion that it would be inappropriate for him to act for further claimants, and that it was "important for all claimants to have confidence in the process". He noted that the amounts of

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206 Media Statement by Hon Tariana Turia, Associate Minister of Health, "Mental health week, Lake Alice compensation", 8 October 2001, OIA.08.01.0241. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

207 Letter from Terence Arnold to Grant Cameron, "Lake Alice", 8 October 2001, OIA.08.01.0237. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

208 Letter from Grant Cameron to the Solicitor-General, "Lake Alice", 9 October 2001, OIA.07.02.0285. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

the earlier settlements, to which he was privy, would remain confidential and would be of no value to any future clients.

19.11 Grant Cameron suggested that it appeared the Crown wanted him out of the ongoing resolution process, and that the media and those outstanding claimants might think that the Crown was trying to set up a different resolution process.

19.12 Grant Cameron considered it plain that there was no legitimate barrier to his involvement with further clients, should he choose.

19.13 In terms of costs, Mr Cameron suggested that when he first met with Hon Bill English to discuss how the affair might best be resolved, he suggested that the Crown should consider paying GCA's costs, as the client group would not do so. That was apparently rejected out of hand. He suggested that it would be appropriate for the Crown to fund the lawyers representing individual claimants throughout the second round.

19.14 Grant Cameron suggested that there would be little requirement for a Counsel Assisting role for the second round, given the work carried out by GCA as Counsel Assisting in the first round.

19.15 The same day, Grant Liddell emailed the Solicitor-General regarding arrangements for counsel for the second round of claimants.[209] He noted that while the Crown could arrange for Dr Collins to act, it could not require claimants to use him or not to use any other lawyer. He noted it also wasn't possible to create equity between the two groups of claimants by reducing the total amount available for division by an amount for costs until it was known what costs GCA had charged. Similarly, it wasn't possible to determine a global sum to be divided until all claims were in. However, Sir Rodney Gallen could be asked to begin on round 2 by working on the same guiding principles he used in round 1, with an assurance that the Crown would in due course front up with a sum of money.

19.16 Grant Liddell and Hamish Hancock considered it would be less effort and more productive if, having told Grant Cameron the Crown considered his involvement inappropriate, it let him represent whoever chooses to have him as their lawyer, and have David Collins determine with all other counsel involved how costs should be dealt with.

19.17 On 10 October 2001, the Solicitor-General wrote to Grant Cameron in relation to his letter dated 9 October 2001.[210] He noted the Crown had always recognised the possibility of other claimants coming forward and had been concerned to ensure that they receive equality of treatment.

19.18 The Solicitor-General further noted that Grant Cameron had issued a media statement advising that further claimants should contact his office without waiting for Crown Law's response to his proposal to aid with the second round. This was after stating he wanted no further involvement, and the Crown established a process for handling further claims on the basis that GCA would

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209 Email from Grant Liddell to Terence Arnold, "Re: Lake Alice", 9 October 2001, OIA.08.01.0198. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

210 Letter from Terence Arnold to Grant Cameron, "Lake Alice", 10 October 2001, OIA.08.01.0093. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

not be involved. The Solicitor-General considered his behaviour fell "far short of acceptable professional conduct".

19.19 The Solicitor-General rejected Grant Cameron's suggestion that the Crown refused to meet his firm's legal costs, noting they had discussed meeting his legal costs with David Caygill and had been told that he considered the firm's costs were a matter between himself and his clients.

19.20 The Solicitor-General noted that, in order for the remaining claimants to receive equitable settlements, their settlements should be reduced to reflect that they are net of legal costs, on the basis the Crown would be meeting all necessary legal costs through the appointment of counsel assisting. It would assist to achieve equity if Grant Cameron advised the basis of his fee arrangements with his clients, "although I accept that you may prefer to keep that confidential".

19.21 The Crown was concerned that Grant Cameron's media statements may have created the perception that potential claimants must contact him if they wished to pursue their claims. There was a further risk that claimants represented by others would feel they had been disadvantaged by not being represented by GCA.

19.22 The Solicitor-General indicated that further claims would be resolved by Sir Rodney Gallen with counsel assisting providing the necessary support. If any claimants wished to retain Grant Cameron they were free to do so, but that would be at their own cost.

19.23 On 11 October 2001, Grant Liddell wrote to Grant Cameron noting that the discontinuances due by 1 October 2001 had not been filed and served, nor had Grant Cameron informed Crown Law whether he continued to hold instructions for particular claimants. Grant Liddell noted that, if all discontinuances were not filed as required by close of business the following day, the Crown would make all necessary applications.[211]

19.24 On 11 October 2001, GCA provided discontinuances for those claimants he had authority to act for. The letter noted proceedings remained on foot for particular claimants.[212]

19.25 On 16 October 2001, Grant Cameron responded to the Solicitor-General's letter dated 10 October 2001.[213] While he rejected many of the assertions made by the Solicitor-General regarding the professionalism of his conduct, he stated that he would be advising any prospective fresh claimants as to the option the Crown was providing (David Collins QC as counsel assisting) and that it might be more financially attractive for them to use that process.

19.26 Regarding a reduction of the award to account for costs, Grant Cameron suggested that Sir Rodney be asked to consider what he might have awarded by way of costs on the first case and then use that figure as a fair basis for reducing the overall sum to be offered to the new group. To the extent this suggestion

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211 Letter from Grant Liddell to Grant Cameron, "Lake Alice", 11 October 2001, OIA.08.01.0075. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

212 Letter from Grant Cameron Associates to Crown Law, "GRO-B v Attorney-General; GRO-B & Others v Attorney-General", 11 October 2001, OIA.08.01.0055. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

213 Letter from Grant Cameron to the Solicitor-General, "Lake Alice", 16 October 2001, OIA.08.02.0240. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

was of any use, Grant Cameron would cooperate in providing relevant material to Sir Rodney Gallen, but only on the basis it was strictly confidential and for him alone.

19.27 Grant Cameron indicated that if he continued to act in the matter, he would ensure full communication between the lawyers concerned so there would be no ability for one party to be advantaged over another.

19.28 He further noted he had a couple of clients who indicated they wanted him to act because they "smell a rat" with the process put up by the Crown. These clients apparently saw Mr Collins as being a "Crown puppet". Grant Cameron indicated he hoped to correct those perceptions "as I have every faith in Dr Collins to act independently and appropriately".

19.29 On 17 October 2001, Grant Liddell wrote to Rupert Ablett-Hampson (Sonja Cooper) indicating his client would be invited to put his case before Sir Rodney Gallen for consideration along with others, who would make a determination of an amount of compensation, on a no-liability basis, on principles he used in determining the settlements of claimants represented by GCA.[214] He noted it would assist, in the meantime, if his client could put together the material he wanted to put before Sir Rodney Gallen, noting it could be made available to him without delay. Settlement would require his client to discontinue his proceeding.

19.30 Rupert Ablett-Hampson replied later that same day.[215] In relation to discontinuing his client's proceedings, he had to date been unable to obtain a copy of the pleadings filed on behalf of the parties. He asked if Crown Law could forward a copy of the pleadings file to date in the claim, to enable him to advise his client in relation to the discontinuance of those proceedings and take appropriate instructions.

19.31 On 19 October 2001, Grant Liddell provided counsel for Dr Leeks a copy of the introduction and Part 1 of Sir Rodney Gallen's report.[216]

19.32 The same day, the Solicitor-General received a letter from S.L. Inder of Evans Henderson Woodbridge indicating they now acted for [Mr D].[217]

19.33 On 23 October 2001, Grant Liddell wrote to Grant Cameron noting that the 49th plaintiff in proceeding CP 91/99 was not referred to in his letter of 11 October. He asked Mr Cameron to advise what the situation was regarding the plaintiff's claim.[218]

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214 Letter from Grant Liddell to Rupert Ablett-Hampson (Sonja Cooper), "Lake Alice claims: your client, [Mr C]", 17 October 2001, OIA.08.02.0226. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

215 Letter from Rupert Ablett-Hampson to Grant Liddell, "[Mr C]: Your Ref HEA007/306', 18 October 2001, OIA.08.02.0111. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

216 Letter from Grant Liddell to Rainey Collins Wright & Co, "[L] v Leeks & Attorney General; McInroe v Leeks & Attorney General", 19 October 2001, OIA.08.02.0152. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

217 Letter from Evan Henderson Woodbridge to the Solicitor-General, "Re:[Mr D] v The Attorney-General CP No 91/99", 19 October 2001, OIA.08.02.0099. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

218 Letter from Grant Liddell to Grant Cameron, "Lake Alice – [name omitted]", 23 October 2001, OIA.08.02.0100. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

19.34 On 25 October 2001, Sarah Simmonds (GCA) wrote to Crown Law indicating that the "47th to 53th" plaintiffs had been discontinued, which therefore included the 49th plaintiff.[219]

19.35 On 30 October 2001, Grant Liddell received a letter from David Collins QC.[220] Mr Collins indicated he had met with Grant Cameron and Sarah Simmonds, and was told Grant Cameron had 15 clients.

19.36 David Collins QC indicated his preference for Grant Cameron to advise his clients of the Crown offer to have Mr Collins represent all the outstanding claimants and if, after being properly informed, his clients wished to remain with his firm, he could then have GCA process the files and forward them to him, charging a sensible fee to the Crown.

19.37 David Collins QC, having spoken to Grant Adam, was "aware this suggestion is not likely to be embraced warmly by the Ministry" because Grant Cameron had previously said he would not charge clients for ongoing work, and had already received a substantial fee.

19.38 David Collins QC suggested that Crown Law deal with Grant Cameron and let him know if the Crown was not going to pay GCA for any ongoing work.

19.39 David Collins QC indicated he had been approached by 60 Minutes Australia, who were interviewing Mr Cameron and some of his clients regarding Dr Leeks, criminal prosecutions, and how medical authorities have not pursued Dr Leeks in Melbourne. David Collins QC refused to participate in the programme.

19.40 On 1 November 2001, in email correspondence regarding discontinuances, Christine Lloyd indicated that the 49th plaintiff did not fall within the criteria for a payment, and it appeared Grant Cameron may have advised her of this "a bit late in the peace (sic), with the result that she has expectations". Christine Lloyd asked for details of those claimants who had new solicitors instructed.[221]

19.41 On 2 November 2001, Grant Cameron wrote to the Solicitor-General enclosing a listing of 14 clients who had provided him with signed authorities for him to act on their behalf in relation to the Round Two settlement.[222] He noted all these clients had been advised of Dr Collins QC's appointment and role. Mr Cameron stated that despite that advice, it seemed most of the new clients had chosen GCA, either by reason of their suspicion of the process created by the Crown or through confidence in GCA's track record.

19.42 Grant Cameron indicated he advised his clients he would be making further representations to the Government about it meeting GCA's reasonable legal costs. He noted that if the Solicitor-General was not party to such a decision, he would take the matter up with the Prime Minister's office.

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219 Letter from Sarah Simmonds to Crown Law, "Lake Alice: [name omitted]", 25 October 2001, OIA.08.02.0062. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

220 Letter from David Collins QC to Grant Liddell, "Lake Alice", 30 October 2001, OIA.08.02.0024. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

221 Email from Christine Lloyd to Grant Liddell, "Re: Discontinuances", 11:14 AM 1 November 2001, OIA.08.03.0364. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

222 Letter from Grant Cameron to the Solicitor-General, "Lake Alice", 2 November 2001, OIA.08.03.0360. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

19.43 Grant Cameron asked that the Solicitor-General convey the details of the intended determination process. His main query was whether the Crown would take a "lump sum" approach, as it did with the first round of settlement.

19.44 On 5 November 2001, GCA wrote to the Solicitor-General with the names of three additional clients, including [Mr E].[223]

19.45 The following day, Sarah Simmonds (GCA) wrote to Crown Law asking whether it had signed the discontinuances forwarded on 11 October 2001.[224] She indicated she understood from [Mr E] that it would be inappropriate for his proceeding to be discontinued, but noted the discontinuances provided did not discontinue on his behalf.

19.46 She asked for comment from Crown Law on how the Government intended to react to Sir Rodney Gallen's recommendation that counselling be provided to claimants at the cost of the Crown.

19.47 On 6 November 2001, David Collins QC emailed Grant Liddell indicating he had received a phone call from Grant Cameron asking what arrangements were being made to cover his fees for work he intended to do in relation to the 17-22 clients he then had in relation to Round Two.[225]

19.48 On 12 November 2001, Grant Cameron wrote to the Solicitor-General with the names of two more clients for whom he was authorised to act. He also noted GCA was investigating the cases of two further individuals to ensure they were in fact in the Child & Adolescent Unit.[226]

19.49 The same day, Margaret White emailed Christine Lloyd regarding the notices of discontinuance and changes of solicitors held. She observed a notice of discontinuance in CP92/99 with respect to all plaintiffs had been received and was yet to be filed. A notice of discontinuance in CP91/100 with respect to the majority of plaintiffs was held.[227]

19.50 On 15 November 2001, Sarah Simmonds wrote to Crown Law again asking whether it had signed the discontinuances, and what action was intended to be taken in respect of Sir Rodney's recommendation that counselling be provided to claimants at the cost of the Crown.[228]

19.51 On 21 November 2001, Grant Cameron wrote to the Solicitor-General indicating a particular claimant was "no longer part of the case which we will be bringing in respect of further Lake Alice clients", and that they were now authorised to act

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223 Letter from Grant Cameron to the Solicitor-General, "Lake Alice", 5 November 2001, OIA.08.04.0421. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

224 Letter from Sarah Simmonds to Crown Law, GRO-B & Others v Attorney-General, GRO-B & Others v Attorney-General", 6 November 2001, OIA.08.04.0410. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

225 Email from David Collins QC to Grant Liddell, 2:58 PM 6 November 2001, OIA.08.04.0415. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

226 Letter from Grant Cameron to the Solicitor-General, "Lake Alice", 12 November 2001, OIA.08.03.0343. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

227 Email from Margaret White to Christine Lloyd, "Discontinuances and Notices of Change of solicitors", 12 November 2001, OIA.08.04.0397. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

228 Letter from Sarah Simmonds to Crown Law, GRO-B & Others v Attorney-General, GRO-B & Others v Attorney-General", 15 November 2001, OIA.08.04.0333. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

for another claimant. Grant Cameron enclosed a full list of his clients, and noted he expected a further 2-5 clients in the near future.[229]

19.52 On 26 November 2001, Grant Liddell wrote to Grant Cameron.[230] In relation to Grant Cameron's request for the Crown to fund his legal fees for the settlement, he confirmed the Crown would not be making any contribution to his costs. Dr Collins' services were available to all claimants in the second round without cost to them.

19.53 Grant Liddell enclosed copies of correspondence the Ministry and Minister of Health had had with the father of the 49th plaintiff, raising the question whether she wished to discontinue her claim. He requested confirmation that Grant Cameron continued to hold an instruction to discontinue for the 49th plaintiff, and noted he proposed to write directly to the 49th plaintiff's father in light of his correspondence. Grant Liddell confirmed he would willingly file discontinuances for the other persons for whom Grant Cameron had provided them, but requested new notices for all but the 49th plaintiff for filing.

19.54 Regarding Grant Cameron's request for funding for counselling, Crown Law was awaiting instructions, although Grant Liddell noted the appropriated $6.5 million had been exhausted in the full and final settlement.

19.55 On 27 November 2001, Sarah Simmonds wrote to Crown Law in response to Grant Liddell's 26 November 2001 letter.[231] She noted that, in light of the correspondence Crown Law had received from the 49th plaintiff's father, GCA could only conclude, contrary to the advice they received from the father, that they did not hold any instructions to discontinue on the plaintiff's behalf. GCA provided a revised discontinuance for proceedings CP 91/99 and asked that the discontinuances be filed.

19.56 On 29 November 2001, Grant Cameron wrote to the Solicitor-General to express concern at the content of Grant Liddell's 26 November 2001 letter.[232] He was concerned not to receive an indication of whether the second round of settlements would be allocated a lump sum, or whether an alternative method was anticipated. He also considered there was no reason for the Crown not to fund external counsel, as David Collins QC would not have to do the work for those clients who were represented by independent counsel. He considered the Crown's refusal to pay those costs could be seen as an inducement for claimants to use David Collins QC to the exclusion of GCA, and that there could be public perception issues regarding the fairness and even-handedness of this process. Grant Cameron further did not consider it necessary for David Collins QC to consider and analyse all claims before they were submitted to Sir Rodney Gallen, noting GCA intended to make its own submissions on behalf of its own clients, and rejected any notion of Dr Collins being involved in the process.

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229 Letter from Grant Cameron to the Solicitor-General, "Lake Alice", 21 November 2001, OIA.08.03.0277. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

230 Letter from Grant Liddell to Grant Cameron, "Lake Alice and your recent correspondence", 26 November 2001, OIA.08.03.0263. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

231 Letter from Sarah Simmonds to Crown Law, "Discontinuances: [name omitted]", 27 November 2001, OIA.08.04.0230. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

232 Letter from Grant Cameron to the Solicitor-General, "Lake Alice", 29 November 2001, OIA.08.04.0197. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

19.57 That same day, Grant Liddell filed the notice of discontinuance by certain plaintiffs for CP 91/99 and the notice of discontinuance by plaintiffs for CP 92/99.[233] Some of those remaining plaintiffs took part in the second round of settlement, although some were found to be ineligible. The majority of these plaintiffs were unable to be contacted, and their claims were not discontinued as far as we are aware.[234]

19.58 Grant Cameron continued to act for claimants in the second round of settlement. The Crown did not contribute to his or other independent counsels' legal fees for these claimants.[235]

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233 Letter from Grant Liddell to the Wellington High Court, "Lake Alice Proceedings", 29 November 2001, OIA.20.19.0042; Notice of discontinuance by plaintiffs, GRO-B & *Ors v The Attorney General* CP 92/99, 29 November 2001, OIA.20.19.0043. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

234 See Memorandum from Margaret White to Grant Liddell, "Lake Alice: HEA007/306", 14 September 2005, OIA.11.01.0002; Letter from Margaret White to Christine Lloyd, "[names omitted]", 27 November 2002, OIA.11.09.0035; Email from Margaret White to Grant Liddell, "Re: Lake Alice – various", 12:07 PM 24 July 2002, OIA.09.02.0171; Email from Christine Lloyd to Grant Liddell, 1:58 PM 24 July 2002, OIA.09.02.0164; Letter from Margaret White to the High Court, GRO-B & Ors v Attorney-General – CP 91/99", 26 September 2002, OIA.20.01.0084. All provided to the Royal Commission in response to NTP 7 on 14 May 2020.

235 Letter from Christine Lloyd to Grant Cameron, "Re: Former Lake Alice Child & Adolescent Unit Patients", 26 June 2002, OIA.09.02.0308. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

APPENDIX C – POLICE REQUESTS FOR INFORMATION FROM CROWN LAW

1 2006: Request for documents related to Mr Paul Zentveld

1.1 The following description of Crown Law's response to a request for documents relating to Mr Paul Zentveld has been assembled in reliance on the documentary record.

1.2 On 11 May 2006, Crown Counsel Grant Liddell (then Team Leader of the Government Business Team) was contacted by Detective Superintendent Malcolm Burgess of the New Zealand Police. Mr Liddell's account of this conversation is recorded in a letter addressed to Senior Solicitor Christine Lloyd at the Ministry of Health dated the same day.[1]

1.3 According to Mr Liddell's letter, Det. Burgess stated that Mr Zentveld was pursuing a complaint against Dr Leeks and wished the Police to have access to material he had earlier prepared for the purpose of civil proceedings. Mr Zentveld had advised that he had bound materials into a book and provided the book to Grant Cameron Associates, the New Zealand Police, and Crown Law. Det. Burgess wished to obtain a copy of the book from Crown Law, as neither Mr Cameron nor the Police had any recollection of the book nor could they locate copies.

1.4 Mr Liddell advised Det. Burgess that he was also unable to recall the book but noted that Mr Zentveld had provided a number of documents during the course of his civil claim. Mr Liddell indicated to Det. Burgess that if Mr Zentveld could provide written authority, the Crown would be willing to provide the Police a copy of the relevant information relating to Mr Zentveld's time at Lake Alice. Mr Liddell's letter records that it was envisaged that information would include Mr Zentveld's medical records and any statements he had given.

1.5 Mr Liddell's letter to Ms Lloyd noted that should he receive further communication from Det. Burgess, Mr Liddell would seek instructions from the Ministry of Health, and recorded his view that he did not know of any reason why the Crown would withhold Mr Zentveld's personal information from the Police if Mr Zentveld provided the appropriate authority.

1.6 Crown Law has no record of any further communication between Mr Liddell and Det. Burgess regarding this request, nor any record of how the request was ultimately resolved. However, two email exchanges between Crown Law and the Ministry of Health give some indication of the steps that followed Mr Liddell's 11 May 2006 letter.

1.7 On 12 May 2006, Ms Lloyd sent an email responding to Mr Liddell's 11 May letter.[2] Ms Lloyd stated that the Ministry of Health was not involved with any criminal inquiry in relation to Mr Zentveld's complaint and had not given instructions to Crown Law to act on the matter. Ms Lloyd stated that should the

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1 Grant Liddell, "Lake Alice: Paul Zentveld – Contact with New Zealand Police", OIA.02.01.0074, 11 May 2006. Provided to the Royal Commission in response to NTP 6 on 7 August 2020.

2 Email from Christine Lloyd, "Fwd: Z", 12 May 2006, OIA.02.01.0072. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

Police wish to request any information from the Ministry, they should contact the Ministry directly in accordance with usual procedure.

1.8 On 16 May 2006, Mr Liddell received a telephone message from Mr Zentveld. The message stated that Mr Zentveld had received a letter from Det. Burgess about the release of his information to the Police and Mr Zentveld wished to provide his consent to the disclosure. On 17 May 2006, Mr Liddell forwarded a copy of Mr Zentveld's message to Ms Lloyd and sought confirmation that Mr Zentveld's inquiry should be sent directly to the Ministry.[3]

1.9 By return email on 17 May 2006,[4] Ms Lloyd reiterated that the Ministry was not involved in any instructions regarding any criminal investigation. Ms Lloyd wrote that Mr Zentveld had been advised that he was not prevented from raising his complaint with Police, but that it was not for the Ministry to advise Mr Zentveld beyond that. Ms Lloyd suggested Mr Zentveld's complaint be referred to the Crown Law Criminal Process team.

1.10 Mr Liddell responded the same day,[5] recording his understanding that Mr Zentveld wished to confirm that information held about Mr Zentveld in relation to Lake Alice and his communications with the Crown could be made available to the Police. Mr Liddell's email recorded his view that he did not see any difficulty with providing Mr Zentveld's personal information to the Police if Mr Zentveld wished to do so. Mr Liddell understood Mr Zentveld was not requesting anything that might attract legal privilege.

1.11 As stated above, there are no records on Crown Law's files recording how this request was resolved.

2 2009: Requests for statements by former staff members at Lake Alice

2.1 In 2009, the Police contacted Crown Law requesting access to statements provided by former staff members at Lake Alice that had been compiled as part of the civil litigation in the 1990s and early 2000s.

2.2 On 25 February 2009, Una Jagose (then Team Leader of the Social Services and Employment Team within the Public Law Group) received a telephone call from Det. Burgess who advised that he was investigating complaints based on the statements of approximately 39 former Lake Alice patients who had settled their civil claims against the Government.

2.3 According to Ms Jagose's file note of that conversation,[6] Det. Burgess advised that during their investigation, the Police occasionally encountered former Lake Alice staff members that refused to discuss the matter but indicated they had provided a statement to the Crown. He asked whether these statements were

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3 Email from Grant Liddell, "Re: Fwd: Paul Zentveld 021-212-3665", 17 May 2006, OIA.02.01.0065. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

4 Email from Cristine Lloyd, "Re: Fwd: Paul Zentveld 021-212-3665", 17 May 2006, OIA.02.01.0068. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

5 Email from Grant Liddell, "Re: Fwd: Paul Zentveld 021-212-3665", 17 May 2006, OIA.02.01.0065. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

6 Una Jagose, File Note, "Police investigation into Lake Alice complaints: Malcolm Burgess", 26 February 2009, OIA.10.01.0376. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

covered by litigation privilege and whether it was possible for the Police to have a look at them. Ms Jagose said she would look into it and get back to him.

2.4 That same day, Ms Jagose sent an email to a junior lawyer and Crown Counsel Lisa Hansen advising them of the call.[7] Her email asked the junior lawyer to locate any staff statements, research whether the statements were privileged, and whether the Crown could waive privilege.

2.5 Having located the staff statements sought by the Police and noting that Crown Law held copies of those statements on behalf of the Ministry of Health, on 31 March 2009 Ms Jagose wrote to Phil Knipe, Chief Legal Advisor at the Ministry of Health, advising that the Police had requested copies of the statements.[8] Ms Jagose's letter asked whether the Ministry was willing to approach the Attorney-General to request a waiver of privilege and allow those statements to be used by the Police.

2.6 Ms Jagose enclosed a letter from Grant Liddell as an example of the approach Crown Law had taken to witness statements in similar circumstances. That letter provided a copy of the statement to its maker, together with a statement that – because of privilege - the maker was not free to provide it to some other person, but could use it to refresh their memory for the purposes of making a fresh statement.[9]

2.7 On 15 April 2009, Ms Jagose received an email from Wendy Brandon, Legal Counsel at the Ministry of Health, advising that the Police had contacted the Ministry requesting to view their files of Lake Alice.[10] Ms Brandon indicated that the Ministry did not consider it appropriate to provide copies of their files to the Police. Ms Brandon wrote that this was due to a lack of consent to the disclosure from the individuals concerned, because the information was gathered for civil (not criminal) litigation purposes, and because some information was privileged. Ms Brandon indicated any waiver request to the Attorney-General would be accompanied by a recommendation from the Ministry that it did not consider it may disclose the information under obligations of confidentiality.

2.8 By reply email the same day,[11] Ms Jagose recorded that she had just taken a call from Det. Burgess who had called to talk about documents held by Crown Law that were subject to litigation privilege. In her email, Ms Jagose noted that these were the documents she had written to Mr Knipe about on 31 March, that she was still awaiting a response, but understood the Ministry was unlikely to be supportive of a waiver.

2.9 Ms Jagose's email also recorded that the documents Det. Burgess was seeking directly from the Ministry were different – they were files about patient complaints ranging from 1969 to 1983. Ms Jagose recorded that Det. Burgess

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7 Email from Una Jagose, "Lake Alice", 25 February 2009, OIA.10.01.0377. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

8 Una Jagose, "Lake Alice Witness Statements", 31 March 2009, OIA.10.01.0367. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

9 Grant Liddell, "Lake Alice", 5 August 2005, OIA.10.01.0379. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

10 Email from Wendy Brandon, "RE: NZ Police inquiry", 15 April 2009, OIA.10.01.0347. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

11 Email from Una Jagose, "Re: NZ Police inquiry", 15 April 2009, OIA.10.01.0345. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

wished to review those documents the following day if possible. She indicated to Ms Brandon that such documents did not attract litigation privilege and could potentially be released under the Official Information Act. Ms Jagose noted it was quite possible the Police investigation into the allegations at Lake Alice would outweigh any privacy interests. She advised that in her view it was worth permitting the Police to access such historical documents and asked the Ministry to consider the matter further.

2.10 After receiving instructions from Ms Brandon,[12] Ms Jagose called Det. Burgess and advised that the documents were in Archives and not available for viewing the following day. In her email to Ms Brandon recounting this phone call,[13] Ms Jagose recorded her view that the Ministry needed to consider the Police request under the Official Information Act and assess whether the documents sought should be released.

2.11 On 26 May 2009, Mr Knipe wrote a response to Ms Jagose's letter of 31 March 2009.[14]

2.12 With regard to witness statements, Mr Knipe stated that the Ministry agreed with the approach indicated in Ms Jagose's letter, referring in particular to the example she had provided. Mr Knipe's letter does not state, in response to Ms Jagose's query, whether the Ministry was willing to seek a waiver of privilege to allow the witness statements to be used by the Police.

2.13 In relation to the information sought directly from the Ministry by the Police, Mr Knipe's letter outlined his view that the material sought was personal health information subject to the Health Information Privacy Code and, in the absence of a warrant from the Court, could not be released without the consent of the former patient concerned or their representative.

2.14 On 12 August 2009, the Ministry of Health was contacted directly by a journalist reporting on the Police investigation into Lake Alice.[15] The following day, Mr Knipe sent Ms Jagose a copy of his proposed response and it became clear there had been a miscommunication between Crown Law and the Ministry about who would respond to Det. Burgess. As recorded in her email to Mr Knipe, Ms Jagose had no further contact with Det. Burgess after their conversation on 15 April and had (wrongly) assumed the Ministry would respond directly. Mr Knipe responded that the Ministry would close the matter off with a short response to Det. Burgess stating that his request was declined and that he would need to obtain either patient consent or a warrant.[16]

2.15 The documentary record indicates that Det. Burgess next approached Crown Law regarding access to staff statements in September 2009. In an email dated

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12 Email from Wendy Brandon, "Re: NZ Police inquiry", 15 April 2009, OIA.10.01.0343. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

13 Email from Una Jagose, "Re: NZ Police inquiry", 16 April 2009, OIA.10.01.0339. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

14 Phil Knipe, "Former Lake Alice Patients – Request for Access To Patient Information By NZ Police", 26 May 2009, OIA.10.01.0327. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

15 Email from Luz Baguioro, "DRAFT media response on the police's investigation into Lake Alice - Link", 12 August 2009, OIA.10.01.0289. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

16 Email from Phil Knipe, "RE: DRAFT Media Response on the police's investigation into Lake Alice", 13 August 2009, OIA.10.01.0289. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

9 September 2009,[17] Det. Burgess wrote to Crown Counsel Lisa Hansen attaching a list of staff names collected from Police complaint files. Det Burgess stated that he wished to obtain any statements from any of the named staff held by the Crown as part of the civil litigation.

2.16 By reply email on 16 September 2009,[18] Ms Hansen advised that she was in the process of requesting from the Attorney-General a waiver of privilege over the relevant witness statements and that she would be assisted by a formal request by letter from Police. That same day, Det. Burgess provided a letter to Crown Law setting out the purpose of the Police investigation and reiterating his request to access any statements taken from staff members identified in the list provided by the Police.[19]

2.17 Ms Hansen emailed Mr Knipe and Ms Brandon at the Ministry of Health on 15 and 16 September 2009 in relation to Det. Burgess' request.[20] In her 15 September 2009 email, Ms Hansen proposed recommending to the Attorney-General that the statements be released to Police on a confidential basis and attached a draft request to the Attorney-General for a waiver of privilege.[21]

2.18 Ms Brandon responded on 15 September 2009 that the Ministry was of the view that no information should be released to or accessed by the Police except by court order or warrant.[22] On 16 September 2009, Ms Brandon wrote further that she retained a high degree of discomfort about disclosing the staff statements.[23] Ms Brandon raised concerns that the witnesses had not been informed of their right to decline to speak to the Police or to obtain legal advice prior to making a statement to the Police.

2.19 Mr Knipe responded similarly by email dated 17 September 2009.[24] Mr Knipe raised concerns that the statements were prepared for the purpose of civil proceedings, that their disclosure to Police may have New Zealand Bill of Rights Act implications, and that it was not clear on what basis the Police request was made (under the Official Information Act, Privacy Act, or as a general request). No further September correspondence has been located by Crown Law.

2.20 On 15 October 2009, Det. Burgess emailed Ms Hansen's legal secretary attaching a schedule of the witnesses who had consented to the Police accessing their

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17 Email from Malcolm Burgess, "Lake Alice", 9 September 2009, OIA.10.01.0236. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

18 Email from Lisa Hansen, "RE: Lake Alice", 16 September 2009, OIA.10.01.0222. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

19 Malcolm Burgess, "Statements re Lake Alice", 16 September 2009, OIA.10.01.0202; Email from Malcolm Burgess, Police, "FW: Crown Letter – Lake Alice Stmnts", 16 September 2009, OIA.10.01.0217. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

20 Email from Lisa Hansen, "FW: Lake Alice", 15 September 2009, OIA.10.01.0224; Email from Lisa Hansen, "FW: Crown Letter – Lake Alice Stmnts", 16 September 2009, OIA.10.01.0215. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

21 Email from Lisa Hansen, "FW: Lake Alice", 15 September 2009, OIA.10.01.0224; Lisa Hansen, "Request to waive legal privilege: Lake Alice staff interview records", 16 September 2009, OIA.10.01.0233. Both provided to the Royal Commission in response to NTP 7 on 14 May 2020.

22 Email from Wendy Brandon, "Re: FW: Lake Alice", 15 September 2009, OIA.10.01.0224. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

23 Email from Wendy Brandon, "Re: FW: Crown Letter – Lake Alice Stmnts", 16 September 2009, OIA.10.01.0210. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

24 Email from Phil Knipe, "Re: FW: Crown Letter – Lake Alice Stmnts", 17 September 2009, OIA.10.01.0207. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

statements or whom the Police had been unable to locate but considered to be central witnesses to the case.[25]

2.21 On 23 October 2009, Ms Jagose wrote to Ms Brandon and Mr Knipe advising that she had received a call from Mr Zentveld that week.[26] Her email recorded that Mr Zentveld was of the view that the Ministry was "hiding behind legal privilege" in respect of Det. Burgess' requests and that he was intending to complain to the Associate Minister. Ms Jagose told Mr Zentveld that she would follow up with the Ministry to see whether a decision on the release of materials to Det. Burgess had been made. Accordingly, her email to the Ministry requested an update on the situation. By return email the same day, Ms Brandon responded that Ms Hansen was managing the file and a way forward had been agreed the week prior.[27]

2.22 Later on 23 October, Ms Hansen provided the Ministry with a draft request to the Attorney-General requesting that he waive privilege in the relevant staff statements.[28] Ms Brandon approved the draft request by return email that day.[29]

2.23 The formal request for a waiver of privilege was submitted to the Attorney-General on 27 October 2009.[30] The request letter noted that the Police had asked Crown Law for the statements of certain named witnesses who had provided the Police their consent to access the statements, were deceased, had dementia, or could not be located but whom Police believed were important to the investigation. Crown Law held statements for six of the witnesses identified by the Police.

2.24 Ms Hansen advised Ms Brandon of the Attorney-General's agreement to waive legal privilege in the six statements on 1 November 2009.[31]

2.25 The following day, Ms Hansen wrote to Det. Burgess advising that Crown Law held statements for six of the witnesses identified by the Police and that the Attorney-General had agreed to waive legal privilege over their statements.[32] The statements were enclosed and provided to the Police.

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25 Email from Malcolm Burgess, "Re: Judgments attached", 15 October 2009, OIA.10.01.0196. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

26 Email from Una Jagose, "Paul Zentveld: Lake Alice", 23 October 2009, OIA.10.01.0201. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

27 Email from Wendy Brandon, "Re: Paul Zentveld: Lake Alice", 23 October 2009, OIA.10.01.0199. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

28 Email from Lisa Hansen, "Re: Paul Zentveld: Lake Alice", 23 October 2009, OIA.10.01.0192. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

29 Email from Wendy Brandon, "Re: Paul Zentveld: Lake Alice", 23 October 2009, OIA.10.01.0189. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

30 Lisa Hansen, "Request to waive legal privilege: Lake Alice staff interview records", 27 October 2009, OIA.10.01.0186. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

31 Email from Lisa Hansen, "Re: Paul Zentveld: Lake Alice", 23 October 2009, OIA.10.01.0178. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

32 Lisa Hansen, "Statements re: Lake Alice", 2 November 2009, OIA.10.01.0053. Provided to the Royal Commission in response to NTP 7 on 14 May 2020.

3 2020 to present: Information sought for purposes of current investigation

3.1 On 20 February 2020, Detective Inspector David Kirby wrote to Mr Knipe and Crown Counsel Kate Hutchinson requesting information to assist with the ongoing Police investigation into Lake Alice. Due to the ongoing nature of the investigation, some details of the information requested by Police are generalised in this brief, but I note that the request included all statements from former Lake Alice staff members taken as part of the civil litigation in the 1990s/early-2000s.

3.2 Ms Hutchinson acknowledged the Police request the following day. On 28 February, Ms Hutchinson provided Det. Kirby with an update – at this stage, the majority of Crown Law's files related to Lake Alice (approximately 60,000 documents) were contained in hard copy only. These files were subsequently scanned and digitised over a number of months in 2020 as part of the Crown's engagement with the Royal Commission process.

3.3 By email dated 3 March 2020, Det. Kirby emailed Mr Knipe and advised that the Police would obtain signed consents from survivors to allow the Police to receive their private information. On 4 March 2020, Det. Kirby advised Crown Law and the Ministry of Health of the scope of the first stage of the Police investigation and the documents requested to assist with this stage.

3.4 On 6 March 2020, Ms Hutchinson provided Det. Kirby with a first tranche of the requested documents. These documents were not subject to legal privilege and did not infringe on the privacy of survivors.

3.5 On 10 March 2020, Det. Kirby, Mr Knipe, Ms Hutchinson, and two Assistant Crown Counsel met to discuss the scope and timeframe of the Police investigation. It was agreed that Crown Law would apply to the Attorney-General for a waiver to provide legally privileged documentation to Police. Among the documents over which a waiver of privilege was sought were all statements by former staff members taken as part of the 1990s/early-2000s civil litigation.

3.6 On 13 March 2020, Crown Law provided a briefing to the Attorney-General requesting a waiver of legal privilege to provide the documents to Police for the purpose of the Police investigation. The Attorney-General agreed to waive privilege on 18 March 2020. The documents, including the staff statements, were provided to Police on 19 March 2020.

3.7 From 21 to 25 March 2020, New Zealand moved up Alert Levels into Alert Level 4. Crown Law staff transitioned to working from home. By email dated 21 April 2020, Det. Kirby advised that the Police would not be able to speak to survivors to obtain their consent until New Zealand moved down Alert Levels.

3.8 On 16 April 2020, the Governor-General consented to the release of the 1977 Mitchell Inquiry documents to the Royal Commission and the Police, and Crown Law was advised of this consent by the Ministry of Health on 19 April 2020. From 21 April 2020, Crown Law attempted to provide the documents to the Police but were limited by IT complications due to staff working from home. The documents were provided to the Police on 23 April 2020 and Detective Senior Sergeant Anthony Tebbutt confirmed receipt on 24 April 2020.

3.9 Following the return to Alert Level 1, Det. Kirby emailed Ms Hutchinson on 15 June 2020 advising that the Police were in the process of approaching survivors for their consent to disclose their private information to the Police. Det. Kirby advised they had set a return date of 1 July 2020 for the consent forms.

3.10 On 18 June 2020, following a telephone call between Ms Hutchinson and Det. Kirby, Ms Hutchinson recorded by email that the Police had advised they had access to 35 boxes of client files held by Grant Cameron Associates. It was expected this included the information the Police had requested from Crown Law and the Ministry of Health. It was therefore agreed that Crown Law and the Ministry would place the Police request on hold for the time being; once Police had reviewed the materials from Mr Cameron, the Police may come back with requests for further information.

3.11 On 2 December 2020, Police approached Crown Law again requesting information, including further information in relation to survivors. Crown Counsel Nicholai Anderson acknowledged the request that same day.

3.12 On 4 December 2020, the Police provided Crown Law with 43 privacy waivers from survivors.

3.13 On 11 December 2020, Deputy-Solicitor-General Aaron Martin (acting on delegation from the Attorney-General), agreed to waive privilege in documents relating to two survivors. These documents were provided to the Police of 14 December 2020 as an example of the type of information held by Crown Law, to enable the Police to confirm that the material was of assistance and had not already been obtained elsewhere.

3.14 On 19 January 2021, Det. Tebbutt advised that the two example files did contain material the Police had not previously seen and requested the remainder of the files be provided. Later that day, Det. Tebbutt provided a further 15 privacy waivers.

3.15 Crown Law is continuing to provide the Police with the information sought in relation to survivors. Crown Law has engaged three new staff to assist with the volume of information to be provided. To date, redactions to the documents sought have comprised redactions to protect the privacy of other individuals, namely other Lake Alice patients; no redactions have been made in relation to legal privilege.